



CITY OF LODI  
COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Consider a Development Agreement between the City of Lodi and GFLIP III, L.P. relating to the development known as Electronic Sign to be located at 1251 South Beckman Road.

**MEETING DATE:** November 17, 2004

**PREPARED BY:** Community Development Director

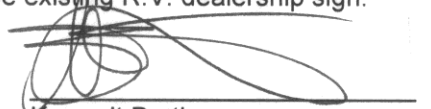
**RECOMMENDED ACTION:** That the City Council approve Development Agreement 04-01 as outlined herein.

**BACKGROUND INFORMATION:** On April 21, 2004, the City Council held a Public Hearing to consider an appeal filed by Key Advertising regarding the Planning Commission's denial of a Use Permit and Variance in order to construct an electronic display sign on Beckman Road. During the public hearing, the applicant's representative suggested that they would consider several concessions in order to make the request more palatable to the community. Among the items offered was the consolidation of all freeway oriented signs that exist now and could exist for future dealerships owned by the Geweke family. It was explained to the Council that in order to grant the variance request, the appropriate hardship finding was still necessary. However, State law does provide an alternative method of considering development requests via a Development Agreement. The Council directed staff to negotiate such an agreement and continued the two requests until that agreement could be returned for Council action.

The Development Agreement before the Council provides for the electronic sign as originally proposed by the Geweke Automotive Group. Specifically, a 75-foot-tall sign with 480 square feet of electronic display per face. In consideration for allowing this sign, the applicant has agreed to a number of things that the City would typically not be able to require. Among those items is the removal of the existing Toyota dealership freeway sign; the exclusion of any further freeway signs on other property owned by the Geweke family and the use of ten percent of the display time for community based organizations and events. The one area that staff and the applicant are not in agreement is the requirement to remove the existing R.V. dealership sign as well. Please note that Mr. Dale Gillespie has requested that the letter attached and dated November 8, 2004 be included for the Council's consideration. With regard to Mr. Gillespie's request, we feel that the allowances provided by the City are generous. There are no restrictions to their ability to advertise the R.V. dealership on the new sign and our view of the intent of the agreement was to clean up all of the signage controlled by the Geweke's along the freeway with this proposal.

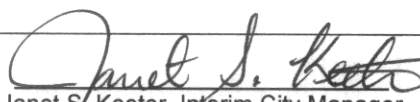
The Planning Commission considered the request at their meeting on October 27, 2004. At that meeting, Mr. Gillespie argued to keep the R.V. sign separate from the proposed action. The Commission recommended approval of the agreement with the requirement to remove the existing R.V. dealership sign.

**FUNDING:** n/a

  
Konradt Bartlam  
Community Development Director

KB/lw

**Attachments:** Draft Development Agreement  
Planning Commission Staff Report and Resolution  
Letter from Dale Gillespie dated November 8, 2004

**APPROVED:**   
Janet S. Keeter, Interim City Manager

RECORDING REQUESTED BY:

City Clerk  
City of Lodi  
P.O. Box 3006  
Lodi, California 95241

AND WHEN RECORDED MAIL TO:

City of Lodi  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF LODI  
AND  
GFLIP III, LP  
RELATING TO THE DEVELOPMENT KNOWN AS  
ELECTRONIC DISPLAY SIGN  
TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA.

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TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA

THIS DEVELOPMENT AGREEMENT (hereinafter this "Agreement") is entered into this \_\_\_\_ day of June, 2004 by and between the City of Lodi, a general law city, organized and existing under the laws of the State of California (hereinafter the "City", and GFLIP III, LP a California limited partnership (hereinafter the "Developer"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer owns that certain real property located at 1251 South Beckman Road. Developer proposes to construct a single seventy five foot high electronic display sign ("the Project"). This sign requires a variance to double the maximum allowable sign area from 480 square feet to 960 square feet. Developer has a legal interest in those certain parcels of land, consisting of approximately \_\_\_\_\_ acres as diagramed in Exhibit "B" attached hereto, and more particularly described in Exhibit "C" attached hereto and incorporated herein (the "Land"). However, the Developer could construct multiple display signs on the Land. The parties agree that allowing Developer to construct a single 75 foot high electronic display instead of multiple smaller signs on the Land is a superior aesthetic alternative and represents sound planning principles.

D. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development

of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, and the "Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with Approvals, the Project Approvals, Subsequent Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of the City in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

## AGREEMENT

### Section 1. General Provisions.

1.A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

1.C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Ordinance No. \_\_\_\_ approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

1.D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until December 31, 2050.

### Section 2. Definitions. In this Agreement, unless the context otherwise requires:

2.A. "City" shall mean the City of Lodi.

2.B. "Developer" means GFLIP, III, LP, and includes the Developer's assignees and/or successors-in-interest.

2.C. "Effective Date" shall have that meaning set forth in Section 1.C of this Agreement.



2.D "Geweke Family" is defined as \_\_\_\_.

2.E "Land" is defined at Recital D.

2.F "Monument Sign" shall mean: An independent, freestanding structure supported on the ground having a solid base as opposed to being supported by poles or open braces.

2.G "Project" is the construction and operation of a 75 foot electronic display sign with a maximum allowable sign area of 960 square feet.

2.H "Pylon Sign" shall mean: An elevated freestanding sign supported by one or more poles, columns or open braces.

### Section 3. Obligations of Developer and City.

3.A. Obligation of Developer. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and Project Approvals. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and Approvals.

3.B. Obligation of City. In consideration of Developer entering into this Agreement, City agrees that it will comply with this Agreement, and with all of Project Approvals, and will, in accordance with the terms of this Agreement, process, and if consistent with this Agreement and applicable state law.

### Section 4. Development of Project and Parcel.

4.A. General Permitted Uses and Subsequent Approvals. The Project's: permitted uses; density and intensity of use; provisions for reservations or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project, shall be those set forth in this Agreement, the Project and the Project Approvals, and any amendments thereto, as further defined below.

4.B. Rules, Regulations, and Official Policies. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project, including those addressing the design, improvement, construction, and building standards, and specifications applicable to the Project and all infrastructure and appurtenances in connection therewith, shall be the Effective Standards.

4.C. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees, and other exactions, policies, standards, laws or regulations which directly relate to the

Project development. For purposes of this section, this section creates a vested right in favor of the Development concerning signage but not future non-signage development.

4.D. Compliance with California Environmental Quality Act. A negative declaration was certified by the City Council on \_\_\_\_\_ ( Council Resolution #\_\_\_\_\_). Except as required by the California Environmental Quality Act as it may be amended from time to time or by other state law, no subsequent environmental impact report, supplement to an environmental impact report, addendum to an environmental impact report, or other type of additional environmental review shall be required of any Subsequent Approval concerning the Project.

4.E. Restrictions on the Project. The Project shall be restricted in the following manner:

1. No new pylon sign shall be constructed on any of the real property identified in Exhibit C. The present Dodge monument sign shall be treated as an existing non-conforming use under the Lodi Zoning Ordinance. With the exception of the existing Dodge Monument Sign, no Monument Signs shall be constructed or maintained on the property identified in Exhibit C in excess of 12 feet in height. Moreover the existing Pylon Signs at Geweke Toyota and Geweke R.V. shall be removed.

2. The Project shall not portray any motion, shall not change images more frequently than once each five seconds, shall not display any backgrounds with more than twenty-five percent of the screen area in white, shall be dimmed below 500 nits during nighttime operations; shall only advertise products and services directly related to the auto dealerships located on the land identified in Exhibit C except for community use described herein; and, shall provide that ten percent of the in-use time of the electronic display shall be made available to the following organizations for community events and messages: City of Lodi, Lodi Conference and Visitors Bureau, Lodi Chamber of Commerce, Lodi Downtown Business Partnership, Lodi-Woodbridge Wine Grape Commission or their successors in interest ("Charitable Organizations"). Furthermore, after the sign is operational, Developer agrees to participate in the Amber Alert program for privately owned electronic signs.

3. Any unused time allotted to the above entities shall be used to display time and temperature. The time allotted to the Charitable Organizations shall be randomly spread throughout the time period that the display is on each day.

4. The Developer shall not apply for any other electronic display on any of its other properties within the municipal boundaries of Lodi. This restriction shall extend to any entity that a Geweke family member enjoys a majority control and shall extend to any present or subsequently acquired real property.

Section 5. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the original parties, and, if Developer assigns all or part of its interest in this Agreement, the consent of such assignees to the extent that such amendment affects the assignees property, portion of the Project, or interest therein.

Section 6. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding.

Section 7. Default; Remedies; Termination.

7.A. Default by Developer.

1. Except for recovery for any damages incurred during the cure period, failure or unreasonable delay by Developer to perform any term, provision, or condition of this Agreement, or creation by Developer of a condition or circumstance which will render such performance impossible, for a period of three (3) months after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such three (3) month period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

2. As an exception to the period of time to cure a default provided by the immediately preceding paragraph, the time to cure a default of subsection 4.E.2 shall be thirty (30) days.

3. During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

4. Subject to the foregoing, after notice and expiration of the three (3) month period without cure or commencing to cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City in the manner set forth in Government Code Sections 65865, 65867, and 65868. Termination may result in removal of the sign.

5. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective immediately upon mailing of such notice by defaulting party pursuant to the section entitled "Notices."

7.B. Annual Review The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months from the date this Agreement is entered into, at which time the Developer, or

successors in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. The City, after a public hearing, shall determine on the basis of substantial evidence whether or not the Developer has, for the period under review, complied in good faith with the terms and conditions of this Agreement. If the City finds that good faith compliance has not occurred, the termination of this Agreement shall commence as provided by the default provisions of Section 7.A.

7.C. Default by City. In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have twenty-one (21) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of the Developer's notice to cure the default.

7.D. Enforced Delay; Extension of Time Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, force majeure, earthquakes, fires, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project's Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by Developer and the City Manager.

7.E. Legal Action. City and Developer may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default; to enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; or to obtain any remedies consistent with the purpose of this Agreement. City shall have the right to seek specific performance or any other legal remedy of the Developer with respect thereto nor to seek specific performance to compel performance of this Agreement. Any legal actions hereunder shall be initiated in the Superior Court of the County of San Joaquin, State of California

7.F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary or appropriate costs incurred in the litigation.

Section 8. Hold Harmless Agreement. Developer agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct operations of the Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on its behalf with respect to the Project. Developer agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer's direct activities in connection with the Project. This Section 8 includes any claims against the City concerning the validity of the Agreement or the City's compliance with the California Environmental Quality Act concerning the Agreement.

Section 9. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (1) the Project is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to its ordinances or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project, subject only to the limitations and obligations of Developer under the Project's Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 10. Miscellaneous Provisions.

10.A. Assignment. Developer may assign this Agreement in whole or in part in connection with the sale of all or any portion of the Land. Notice of the assignment shall be given to the City as provided herein prior to the effective date of the assignment. Such notice shall identify and describe the assignee.

10.B. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project or density or design of the Project applicable to the development of the Project at the Effective Date of this Agreement as provided by Government Code Section 65866, unless such change, alteration, or amendment is permitted under this Agreement. In addition, in the event of any conflict between this Agreement and the Project Approvals, the terms of this Agreement will prevail.

10.C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

10.D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

10.E. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

10.F. Conflict Between Agreement and Exhibits. If a conflict exists between the terms of the Agreement and the Exhibits, the Agreement shall control over the inconsistent portion of any exhibit. The Project Approvals, and Effective Standards contained in Exhibits hereto may be amended pursuant to and consistent with this Agreement without amendment to this Agreement.

Section 11. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested, or by overnight or other courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after refusal of delivery of a registered or certified letter containing such notice, properly addressed, with postage prepaid. If personally delivered, a notice shall be deemed to have been given when delivered to the party or refused by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City of Lodi  
221 West Pine Street  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

If to Developer, to:

GFLIP III, LP  
P.O. Box 1210  
Lodi, California 95241

Section 12. Entire Agreement; Counterparts and Exhibits. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of ( ) pages and ( ) exhibits which constitute, in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 13. Binding Effect and Recordation of Development Agreement. The burden of this Agreement shall bind, and its benefits shall inure to the successors-in-interest of the City and Developer. No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of San Joaquin.

Section 14. CalTrans Permits and Approval. Developer acknowledges that it must obtain necessary approvals from the State Department of Transportation before constructing the Development.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF LODI

DEVELOPER:

GFLIP III, LP, a California Limited  
Partnership Corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: City Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

CITY ATTORNEY

By: \_\_\_\_\_  
Title: City Attorney



NOTARY ACKNOWLEDGMENTS

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA           )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



MEMORANDUM, City of Lodi, Community Development Department

To: Planning Commission  
From: Community Development Department  
Date: October 27, 2004  
Subject: The request of GREM (Geweke) for a recommendation to the City Council for the approval of Development Agreement 04-01 regarding sign allowances, including an electronic message board, for the properties located from 880 - 1337 S. Beckman Road and 1235 E. Kettleman Lane and certify Negative Declaration (ND-04-06) for the project.

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**Recommendation**

Staff recommends that the Planning Commission recommend approval of the Development Agreement, as submitted, and the certification of Negative Declaration ND-04-06 to the City Council.

**Background**

The Planning Commission may recall that the origins of this item began with an appeal of my interpretation of the City Zoning Ordinance regarding flashing, moving or animated signs. The Commissions action supported my interpretation which required the Geweke Automotive Group to file a request for Use Permit approval in order to erect an electronic message board on property located at 1251 South Beckman Road.

Subsequent to the Planning Commission decision, the applicants filed a request for the electronic display sign as well as a variance request to double the maximum allowable area for a sign. That request was denied by the Planning Commission on February 11, 2004 based on findings made by the Commission that did not support the applicant's request. On February 12, 2004, the applicant appealed the Planning Commission decision to the City Council. The City Council held a public hearing on April 21, 2004 to consider the appeal of the Planning Commission decision. During the public hearing, the applicant's representative suggested that they would consider several concessions in order to make the request more palatable to the community. Among the items offered was the consolidation of all freeway oriented signs that exist now and could exist for future dealerships owned by the Geweke family. It was explained to the council that in order to grant the variance request, the appropriate hardship finding was still necessary. However, state law does provide an alternative method of considering development requests via a Development Agreement. The Council directed staff to negotiate such an agreement and continued the two requests until that agreement could be returned for Council action.

## **Development Agreement**

Under California State Law, a Development Agreement may be negotiated for any land use approval. Many times this type of agreement is used for very large development projects that may take years to build out. The agreement provides certainty for both parties during the process. In this case, the agreement acts as a contract between the City and the applicant. They receive a benefit in the form of allowing the sign they have proposed. The City receives a benefit in being able to condition the approval of the sign with items that we would not otherwise be allowed to consider. For example, this Development Agreement requires the removal of the two existing freeway oriented signs at the R.V. and Toyota dealerships on Beckman Road. In addition, it prohibits any additional freeway signs from being erected on the properties owned by the Geweke family and prohibits any further electronic signs on those properties.

It is staff's opinion that the Development Agreement reflects the wishes of the City Council. It will allow the Geweke Automotive Group to have a 75-foot-tall electronic display sign with an area of 480 square feet per face as originally requested.

Respectively Submitted,



Konrad Bartlam  
Community Development Director

### Attachments:

Planning Commission Staff Report & Minutes - 2/11/04  
City Council Staff Report and Minutes 4/21/04  
Development Agreement 04-01  
Exhibit "A", A-1, B, C, D, from Geweke Auto Group  
Negative Declaration ND-04-06  
Draft Resolution



**MEMORANDUM, City of Lodi, Community Development Department**

**To:** Planning Commission  
**From:** Community Development Department  
**Date:** February 11, 2004  
**Subject:** The request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet, to be located at 1251 South Beckman Road.

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RECOMMENDATION

Staff recommends that the Planning Commission deny the requests of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet, to be located at 1251 South Beckman Road, relative to the findings listed in the attached resolutions.

SUMMARY

The applicant is proposing to construct a two-sided 75-foot-tall freeway information sign near the north end of the Geweke Dodge and Kia Dealership at 1251 South Beckman Road. The area of signage will be 24-feet wide by 20-feet-tall on both sides, for a total of 960-square-feet of signage. Each side of the sign has a 21-foot 8-inch wide by 11-foot 3-inch tall, 245 square-foot electronic message center panel. The electronic message center is essentially a television and/or computer monitor. The remaining sign area is proposed to state "Geweke Auto Group." Given the size, height, and placement of the sign, it is primarily designed for viewing by northbound and southbound motorists on State Highway 99. The sign requires Planning Commission approval of a Use Permit for the electronic message center panels and a Variance to double the maximum allowable size of the overall display area.

USE PERMIT ANALYSIS

The Planning Commission, at its public hearing meeting of October 22, 2003 unanimously determined that electronic message center display's require use permit approval. Given this decision, the applicant is now requesting a Use Permit for the electronic message center displays (see memo of 10/22/03).

The applicant has provided a list of self imposed conditions that staff would like to address first (see attached). We find that each of the items listed under number one are required by the State regulations in the Outdoor Advertising Act. Number two, is generous but does not restrict other property owners from applying, and if the sign is approved, a precedent will be set prompting more applications. Number 3, is addressed in the Variance Analysis section below. Numbers 4 and 5, are generous but unbinding offers of the applicant that benefit the public and citizens of Lodi.

Staff has found many different issues regarding the proposed sign including its impacts on traffic, the City's difficulty in regulating the content of

advertisements, the precedent that will be set, the aesthetic aspects of the sign, and first and foremost whether the sign is consistent with the City's General Plan.

Given that the project is adjacent to two highways, the traffic issues will be addressed by Cal Trans through their regulations and permitting process. The City's ability to control sign content is limited by the first amendment. The proposed sign is an on-premise sign restricting signage to goods and services available on this property only; however, conditions may be tested or challenged once the sign is in place. If the sign is approved, the appearance and construction of the sign will be reviewed by the Community Development Department during the building permit and plan check review process.

The following paragraphs include excerpts from California State Government Code and City of Lodi General Plan Policies.

The State of California, Planning and Zoning Law, Section 65103 (b), mandates that the City of Lodi shall: "Implement the general plan through actions including, but not limited to, the administration of specific plans and zoning and subdivision ordinances." Thus, the provisions of the zoning code must be consistent with the General Plan policies. Section 17.75.030 of the zoning ordinance requires that building permits must be consistent with the zoning code and thus the provisions of the General Plan.

Section 65301 further states: "The degree of specificity and level of detail of the discussion of each such element shall reflect local conditions and circumstances." In other words, it does not matter what other cities visions are in their local context. What is prevalent is what Lodi's expectations are for the community.

Section 65302 states that, "The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals". The provisions of the General Plan give staff day-to-day direction on interpretation. Our general plan does in fact specifically mention development standards along the 99 corridor.

Section 65303 states that, "The general plan may include any other elements or address any other subjects which, in the judgment of the legislative body, relate to the physical development of the county or city." The City has adopted an Urban Design and Cultural Resources Element of the General Plan.

Section 65400 (a) mandates that staff "investigate and make recommendations to the legislative body regarding reasonable and practical means for implementing the general plan or element of the general plan, so that it will serve as an effective guide for the orderly growth and development." Given this mandate, we find that it is staff's duty to make recommendations to the legislative body regarding the implementation of the General Plan.

The City's General Plan Land Use Element Goal "A", Policy 1, states that: "The City shall seek to preserve Lodi's small-town and rural qualities." Policy Question: Does a large electronic sign serve to preserve small-town and rural qualities?

Urban Design and Cultural Resources Element, Goal "B", "To establish identifiable, visually appealing, and memorable entrances to the City", Policy 1, "The City shall upgrade the principal roads entering the City at strategic entry points through landscaping, signage, light standards, and other physical elements that identify and enhance gateways to the community. Entry points should be identified and designated on SR 99". Policy question: Will an electronic sign create an identifiable, visually appealing and memorable entrance at the interchange of Highway's 99 and 12?

Urban Design and Cultural Resources Element, Goal "C", "To maintain and enhance the aesthetic quality of major streets and public/civic areas." Policy Question: Will an electronic sign maintain and enhance the aesthetic quality of the 99 corridor?

Given each of the adopted policies above and the historic position of the City to maintain Lodi's character and appeal, staff finds that the proposed electronic message center sign and its location near the intersection of our two major highways is in direct conflict with the stated policies of the General Plan. In addition, staff finds that the self-imposed conditions are generous but that a majority of them are required by the California Outdoor Advertising Act anyway, most particularly condition 1(e) limiting advertising to goods and services available on site. Cal Trans would not allow off-premise advertising on this site because the sign is adjacent to the northbound on-ramp of Highway 99.

We felt that it was important to note that the City has recently approved two electronic time and temperature signs; one of the signs is located on Cluff Avenue and Lockeford Street and the other is at the Bank of Stockton on the corner of Church and Walnut Streets. These signs were approved based on the fact that all they display are time and temperature which was found to be beneficial to the general public, did not include advertising, and are no larger than 6-square-feet per side. We also wanted to make it clear that the electronic message center sign at the Lodi Grape Festival Grounds is owned by San Joaquin County and is not under the jurisdiction of the City.

#### VARIANCE ANALYSIS

The Planning Commission may remember that the original proposal was for two separate sign poles to be located a short distance from one another. That proposal was an attempt to circumvent the intent of the Sign Ordinance, which limits individual signs to a maximum of 480-square-feet. Since they couldn't have one sign with 960 square-feet, they would build two with 480. Research by City Staff found; however, that the California Outdoor Advertising Act requires that electronic message center displays must be at least 1,000-feet from one another. This finding has prompted the additional request for a Variance to allow one sign with 480 square-feet of signage on each sign face.

The Zoning Ordinance states that "In specific cases where it is exceptionally difficult, if not impossible, to comply with the exact provisions of this title, the planning commission has the power to allow such adjustments from the provisions contained in this title as will prevent unnecessary hardships or injustice, and at the same time most nearly accomplish the general purpose and intent of this title." The Zoning Ordinance requires that "in granting any adjustment, the planning commission shall find that such adjustment will

relieve an unnecessary hardship or practical difficulty that would otherwise be caused by the application of the strict letter of this chapter and that such adjustment will not be contrary to the public welfare.”

Variance requests place a difficult burden of proof on the applicant, and in certain situations findings can be made to justify a request. In this case; however, the applicant has not provided an example of how their request constitutes a hardship or injustice. They have simply made a request in Number 3 of their list that they: “...would like to have sign area calculated on only one face of the display as is done for off-premises signs in section 17.63.370(C) of the Lodi Municipal Code allowing applicant to install one double faced sign instead of two single faced signs” (see attached). The statement is not a hardship or an injustice; it is a desire to use an inapplicable and inappropriate section of the municipal code merely because it allows more signage. The proposed sign is an on-premise sign that is restricted to advertising of goods and services available on this property only. The section they have quoted is limited to off premise signs only, which are limited to advertising good and services available at some other location or business; there is no in-between.

The Sign Ordinance specifically states in Article I, Generally, Section 17.63.110 Area Calculation, that: “In calculating the total area of signs, all readable surfaces shall be counted.” We find that there is no room for interpretation of this code. In Article V., General Commercial and Industrial Zones, Section 17.63.330 Size--Absolute maximum, states that: “The maximum size of any one sign shall be four hundred eighty square feet.” Once again, we find there is no room for interpretation of this code. Furthermore, staff is not aware of any approval of a Variance to increase the allowable signage for any business in Lodi. We find that the City’s Sign Ordinance is more than generous, and that in the majority of cases allowable signage goes unused.

In closing, had the applicant provided the City with a hardship or injustice, it would have been difficult for staff to support because the site is completely visible from the highway, is unmistakably a Dodge and Kia automotive dealership, and has been without need of a freestanding sign on its highway frontage since it was completed back in June of 2002.

#### ALTERNATIVE PLANNING COMMISSION ACTIONS

- Approve the requests with conditions
- Deny the requests
- Continue the requests

Respectfully Submitted,



Mark Meissner  
Associate Planner

Reviewed and Concur,



Konradt Bartlam  
Community Development Director



**-CITY OF LODI  
PLANNING COMMISSION  
Staff Report**

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**MEETING DATE:** February 11, 2004

**APPLICATION NO:** U-03-024 (Use Permit) &  
A-03-025 (Variance)

**REQUEST:** The request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road.

**LOCATION:** 1251 South Beckman Road; APN: 049-250-75

**APPLICANT:** Key Advertising, Inc.  
c/o Kelly Higgs  
1020 South Beckman Road  
Lodi, CA 95240

**PROPERTY OWNER:** GFLIP III, LP  
P.O. Box 1210  
Lodi, CA 95241

**Site Characteristics:**

The project site is a triangular shaped property fronting on Business Park Drive on the south, Beckman Road on the east, and the Highway 99 northbound on-ramp on the west. The site is fully developed as the Geweke, Dodge and Kia automotive dealerships.

**General Plan Designation:** LI, Light Industrial.  
**Zoning Designation:** M-1, Light Industrial.  
**Property Size:** 6.78 acres.

**Adjacent Zoning and Land Use:**

**Northeast:** M-1, Light Industrial. Across Beckman Road to the northeast is approximately 42.5 acres of vacant land owned by the applicant. A little further to the northeast is the Geweke Toyota dealership.

**Southeast:** M-1, Light Industrial. To the southeast across Business Park Drive is a Taco Bell, and a vacant 2-acre parcel owned by the applicant.

**West:** Highway 99. Adjacent to the east or rear of the site is the northbound on-ramp to State Route Highway 99.

**South:** C-2, General Commercial. Directly south of the auto dealership is a McDonald's restaurant fronting Kettleman Lane and Business Park Drive.

**Neighborhood Characteristics:**

This area of the City is seeing an increase in attention in the development of auto dealerships and auto/transient oriented businesses. The majority of land surrounding the project site is owned and controlled by the applicant, whose desire is to develop this area as an auto mall with associated transient oriented services. Dennis Plummer, the owner of Plummer Cadillac and his towing and body shop services, will be moving his interests to the area to the east on Kettleman Lane.

**ENVIRONMENTAL ASSESSMENTS:**

Upon initial study, the project was found to be consistent with the provisions of Section 15305(a), "Minor Alterations in Land Use Limitations," of the California Environmental Quality Act Guidelines making the project Categorically Exempt.

**PUBLIC HEARING NOTICE:**

Legal Notice for the Variance was published on January 31, 2004. A total of 6 notices were sent to all property owners of record within a 300-foot radius of the subject property.

**RECOMMENDATION:**

Staff recommends that the Planning Commission deny the requests of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road, relative to the findings listed in the attached resolution.

**ALTERNATIVE PLANNING COMMISSION ACTIONS:**

- Approve the request with alternate conditions
- Deny the request
- Continue the request

**ATTACHMENTS:**

1. Vicinity Map
2. Memo 10/22/03
3. Applicant's Conditions.
4. Site Plan
5. Elevations
6. Draft Resolutions







**MEMORANDUM, City of Lodi, Community Development Department**

**To:** Planning Commission  
**From:** Community Development Director  
**Date:** October 22, 2003  
**Subject:** Appeal of the Community Development Director's interpretation of the Zoning Ordinance regarding flashing, moving or animated signs. Bumstead Display Consulting on behalf of Key Advertising, Inc. (Geweke)

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The request before the Planning Commission is fairly straightforward. The appellant believes that my interpretation of the City's Zoning Ordinance is wrong, and has appealed my decision regarding their sign application.

The appellant is a sign consultant hired by Geweke Automotive Group to erect two electronic message display signs on the Dodge/Chrysler dealership property. At issue is Section 17.63.080 Flashing, moving or animated signs. Specifically, this Section reads:

“Flashing, moving or animated signs are subject to the issuance of a Use Permit, and no such permit shall be issued if the sign will tend to cause a traffic hazard.”

My interpretation of this Section follows my predecessor's view as well. Simply, an electronic message display flashes. Absent a specific definition in the Zoning Ordinance, staff would typically look to a common definition found in a dictionary of wide spread use. In my case, I have a Webster's Ninth New Collegiate Dictionary. Webster's defines flash as follows:

“to appear suddenly”  
“to move with great speed”  
“to break forth or out so as to make a sudden display”

All of these are consistent with my understanding of an electronic message display. In fact, a similar example may be found on the Grape Festival Grounds at the corner of Lockeford Street and Cherokee Lane.

The appellant has provided a detailed justification for his position. In response, I would offer the following observations:

Project Description: In fact, the appellant has submitted building permit applications for two, single-faced electronic display signs. One is proposed to face north and a second is proposed to face south.

Applicant position regarding Planning Department Requirement for Use Permit for above described sign: I believe I have described the rationale used in making my decision. I would further argue that my predecessor held the same interpretation. Moreover, this interpretation has been applied to recent time & temperature signs that also electronically flash.

California Outdoor Advertising Act and various Cities sign requirements: The fact that the state may define a sign in a certain way has no bearing on the City of Lodi. In terms of what other cities may allow, I would tend to disregard this as a basis for what the City of Lodi should allow; however, I would note that almost all of the cities shown only allow these types of signs following some other Planning Commission review. As an example:

- Manteca requires a Major Sign Permit (Planning Commission approval).
- Merced requires a Conditional Use Permit.
- Vacaville requires a Planning Commission approved Sign Plan.
- Modesto requires a Conditional Use Permit.
- Stockton requires a Use Permit.

Finally I would like to make clear that I have not opined that the sign proposed might cause a traffic hazard.

In summary, it is not staff's position that these signs are prohibited, but rather require a Planning Commission public hearing for a Use Permit. I would further note that this is the same circumstance that most of the example cities the appellant has cited use and it is the most conservative approach that can be taken. Making an argument that the public should not have an opportunity for input is not consistent with this City's past practice.

Respectfully Submitted,

Konradt Bartlam  
Community Development Director

KB/lw

Attachments

**Project Description:**

Install freestanding sign(s) as per attached drawings. A portion of the sign shall have an electronic display.

**Applicant Proposal/Request for Use Permit:**

1. Applicant would like to have portion of sign be electronic display to operate under the following conditional use:
  - a. Sign shall not portray any motion
  - b. Sign shall not change images more frequently than once each 5 seconds
  - c. Sign shall not display any backgrounds with more than 25% of the screen area in white.
  - d. Sign shall be dimmed below 500 nits during nighttime operation.
  - e. Sign shall not display companies, products or services that are not sold on the site for which the permit is issued.
2. Applicant will agree to abstain from installing any other electronic displays on any of its other properties within the city limits of Lodi, CA.
3. Applicant would like to have sign area calculated on only one face of the display as is done for off-premises signs in section 17.63.370(C) of the Lodi Municipal Code allowing applicant to install one double faced sign instead of two single faced signs.
4. Applicant would be willing to share 10% of time promoting downtown Lodi, Wine and Visitor Center events and community not for profit events such as Lodi Street Faire, Oooh Ahhh Festival and Chamber of Commerce Wine Stroll etc.
5. Applicant would be willing to offer up participation and cooperate with the National Amber Alert program.

PLANNING COMMISSION RESOLUTION NO. 04-\_\_

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI  
DENYING THE REQUEST OF KEY ADVERTISING FOR A USE PERMIT TO  
ALLOW A 75-FOOT HIGH ELECTRONIC DISPLAY SIGN TO BE LOCATED AT  
1251 S. BECKMAN RD.

WHEREAS, the Planning commission of the City of Lodi has heretofore held a duly noticed public hearing, as required by law, to consider the use permit request for a 75-foot high electronic display sign to be located at 1251 South Beckman Road;

WHEREAS, the project proponent is Key Advertising, Inc., 1020 South Beckman Road, Lodi, CA 95240;

WHEREAS, all legal prerequisites to the denial of this request have occurred;

WHEREAS, the property is zoned M-1, Light Industrial;

WHEREAS, the property is located at 1251 South Beckman Road;

WHEREAS, the property is visible and identifiable as the Geweke Dodge and Kia automotive dealership to both northbound and southbound motorists on State Hwy. 99;

WHEREAS, the sign is located in close proximity to the intersection of State Highway 99 and Highway 12.

WHEREAS, the requested electronic message center sign is 75-feet high.

WHEREAS, the requested electronic message center sign has 244 square-feet of viewable area on its north and south faces.

WHEREAS, the requested electronic message center sign is capable of displaying anything that a television or computer may display or create;

WHEREAS, the requested use permit is not consistent with the City's General Plan goals and policies established to preserve and protect Lodi's appearance and character.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi as follows:

1. It is hereby found that the requested use permit is not consistent with the municipal codes of the City of Lodi regulating signs.
2. It is found that the requested use permit is not required for the applicant to identify itself.
3. It is further found that the height, size, and location of the electronic message center sign is not consistent with the General Plan as follows:
  - a. Land Use Element Goal "A", Policy 1: "The City shall seek to preserve Lodi's small-town and rural qualities."
  - b. Urban Design and Cultural Resources Element, Goal "B", "To establish identifiable, visually appealing, and memorable entrances to the City."



3. It is further found that denial of the variance does not create or maintain an unnecessary hardship or injustice on the Geweke auto dealership.

Dated: February 11, 2004

I hereby certify that Planning Commission Resolution Number 04-\_\_\_\_ was approved and adopted by the Planning Commission of the City of Lodi at a regular meeting held on February 11, 2004 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Secretary, Planning Commission

PLANNING COMMISSION RESOLUTION NO. 04-\_\_

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI  
TO DENY THE REQUEST OF KEY ADVERTISING FOR A VARIANCE TO  
DOUBLE THE MAXIMUM ALLOWABLE SIGN AREA FROM 480 SQ. FT. TO  
960 SQ. FT. FOR A SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN  
ROAD.

WHEREAS, the Planning commission of the City of Lodi has  
heretofore held a duly noticed public hearing, as required by law, to  
consider the variance request to double the maximum allowable sign area  
from 480 sq. ft. to 960 sq. ft. for a sign to be located at 1251 South  
Beckman Road;

WHEREAS, the project proponent is Key Advertising, Inc., 1020 South  
Beckman Road, Lodi, CA 95240;

WHEREAS, all legal prerequisites to the denial of this request have  
occurred;

WHEREAS, the property is zoned M-1, Light Industrial;

WHEREAS, the property is located at 1251 South Beckman Road;

WHEREAS, the property is visible and identifiable as the Geweke  
Dodge and Kia automotive dealership to both northbound and southbound  
motorists on State Highway 99;

WHEREAS, the requested variance has no basis for hardship or  
injustice that is necessary for the Planning Commission to make the  
required findings for approval.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the  
Planning Commission of the City of Lodi as follows:

1. It is hereby found that the requested variance is not consistent with  
the following municipal codes of the City of Lodi regulating signs in  
general, and in the M-1, Light Industrial Zone:
  - a. Article I., Generally, Section 17.63.110 Area Calculation, states  
that: "In calculating the total area of signs, all readable surfaces  
shall be counted."
  - b. Article V., General Commercial and Industrial Zones, Section  
17.63.330 Size--Absolute maximum, states that: "The maximum  
size of any one sign shall be four hundred eighty square feet."
  - c. Article V., General Commercial and Industrial Zones, Section  
17.63.370(C) Off-premises signs, states that: "In determining the  
maximum size of two off-premises signs which are placed back to  
back on the same structure, only one readable surface shall be  
counted."
2. Furthermore, it is found that the requested variance is not required  
for the Geweke auto dealership to adequately identify itself.

- c. Urban Design and Cultural Resources Element, Goal "C", "To maintain and enhance the aesthetic quality of major streets and public/civic areas."

Dated: February 11, 2004

I hereby certify that Planning Commission Resolution Number 04-\_\_\_\_ was approved and adopted by the Planning Commission of the City of Lodi at a regular meeting held on February 11, 2004 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: \_\_\_\_\_  
Secretary, Planning Commission

## **Planning Commission minutes 2-11-04**

**The request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road.** Associate Planner Meissner presented the item to the Commission. He stated that the request conflicted with the City's General Plan. Staff felt the sign would create impacts on traffic, be difficult in regulating content, set a precedent for future requests, and whether the sign was consistent with the City's General Plan. Staff could not find any hardships to justify the Variance request. They felt that the dealership was completely visible from the highway and that the Variance was unnecessary for the auto dealership to properly identify itself. Staff was recommending denial of both of the requests.

### **Hearing opened to Public**

Dale Gillespie, 2475 Maggio Circle, Lodi. Mr. Gillespie was present on behalf of Key Advertising. As their property is developed for more auto uses, they would agree to a deed restriction on the remainder of their property to not construct any pylon signs, upon the property, if their request is approved for the subject sign. His business wants to sell more cars and they are convinced the sign will generate more revenue and jobs for the city. He noted that most vehicles are purchased from people coming from out of town and he wanted to do whatever they could do draw more people to the dealership. He further offered that 10% of the sign time could be used to promote Lodi events. He felt the community, as a whole, would benefit.

Commissioner Heinitz asked if sign was a "flashing" sign. Mr. Gillespie replied that it was digital.

Commissioner White asked if Mr. Gillespie would be willing to remove the existing Toyota sign on the dealership's property. Mr. Gillespie stated he would be willing to not put any other pylon signs on the property if he were granted the subject sign.

Commissioner Phillips questioned if there were similar signs in the area to the one being proposed. Mr. Gillespie replied that there were some at the Home Depot in Manteca and one at Roseville Auto Mall.

Commissioner Mattheis noted that he could not find any hardship for the request of additional square footage and the signs already on the buildings were visible enough.

Commissioner Heinitz stated that he found these types of signs to be intrusive.

Commissioner Haugan felt that having both sides of the sign would be a good advantage for the community to promote itself to the people that drive by. He did not have a problem with the sign.

Commissioner Moran stated she did not like digital signs and that the sign would take away the small town atmosphere felt in Lodi.

Commissioner White stated he would be in favor of the sign only if it changed every 10 minutes.

The Planning Commission on motion of Commissioner Heinitz, Moran second, voted to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road by the following vote:

AYES: Commissioners: Aguirre, Heinitz, Moran, and Chairman Mattheis

NOES: Commissioners: Haugan and White

ABSENT: Commissioners: Phillips

ABSTAIN: Commissioners



## CITY OF LODI COUNCIL COMMUNICATION

**AGENDA TITLE:** Conduct Public Hearing to consider an appeal received from Key Advertising Inc., regarding the Planning Commission's decision to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road.

**MEETING DATE:** April 21, 2004

**PREPARED BY:** Community Development Director

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**RECOMMENDED ACTION:** That the City Council uphold the Planning Commission's decision to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign, and a Variance to double the maximum allowable sign area from 480 square-feet to 960 square-feet to be located at 1251 South Beckman Road.

**BACKGROUND INFORMATION:** The appellant, "Key Advertising," is proposing to construct a two-sided 75-foot-tall freeway information sign near the north end of the Geweke Dodge and Kia Dealership at 1251 South Beckman Road.

The area of signage will be 24-feet wide by 20-feet-tall on both sides, for a total of 960-square-feet of signage. Each side of the sign has a 21-foot 8-inch wide by 11-foot 3-inch tall, 245 square-foot electronic message center panel. The electronic message center is essentially a television and/or computer monitor. The remaining sign area is proposed to state "Geweke Auto Group." Given the size, height, and placement of the sign, it is primarily designed for viewing by northbound and southbound motorists on State Highway 99 (see exhibit 1 & 2).

The Planning Commission at its Public Hearing of February 11, 2004 reviewed and denied the requests for a Use Permit and a Variance. The Use Permit for the large electronic display was denied on the grounds that the sign's size, location, and appearance near the intersection of the City's two major highways were inconsistent with goals and policies of the City's General Plan; in particular those pertaining to the preservation of Lodi's small town and rural qualities, and the aesthetic qualities of our major streets and entrances. Staff also pointed out other issues like those regarding potential impacts on highway traffic, the City's inability to regulate the content of advertisements, the precedent that would be set, and the visual aspects of the sign.

During the public hearing the applicant's representative suggested that the one large sign would serve the existing and future auto dealerships of the Geweke Auto Group along Beckman Road. This suggestion would eliminate the need for multiple 75-foot high freeway signs. The proposal; however, would not benefit other auto dealerships within the area, nor would it remove the State's law limiting advertising on the sign to products and services available on the premises. The applicant also provided a self-imposed list of conditions, and a donation of advertising time to the City should the City approve the request (see exhibit 3). Each of the requests was found to be generous but they had their own issues. Conditions 1(a-e), are essentially required by the State Outdoor Advertising Act. Condition 2, would not apply to other property owners of the City, which goes back to the precedent of approving the

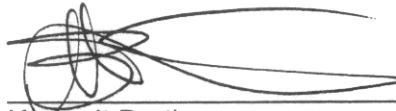
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**APPROVED:** \_\_\_\_\_  
H. Dixon Flynn, City Manager

electronic sign. Condition 3, is the variance request. Condition 4, would not be legal, given that the City or its interests are not exempt from the State law limiting advertising to products and services available on the premises.

As far as the Variance was concerned, the Planning Commission denied the request because there was no evidence to support it. The City's Zoning Ordinance, as well as California State Law, requires that the City make findings to justify the granting of a variance. The findings must include an explanation of how the property's size, shape, or location somehow keeps the owner from fully utilizing his land within the constraints of the law. This situation is typically termed a "hardship." The findings could also include an argument that others within the same zoning are allowed what the applicant is not. This would be termed an "injustice." The applicant did not provide any information to establish the required hardship or injustice, so neither staff nor the Planning Commission could justify the request.

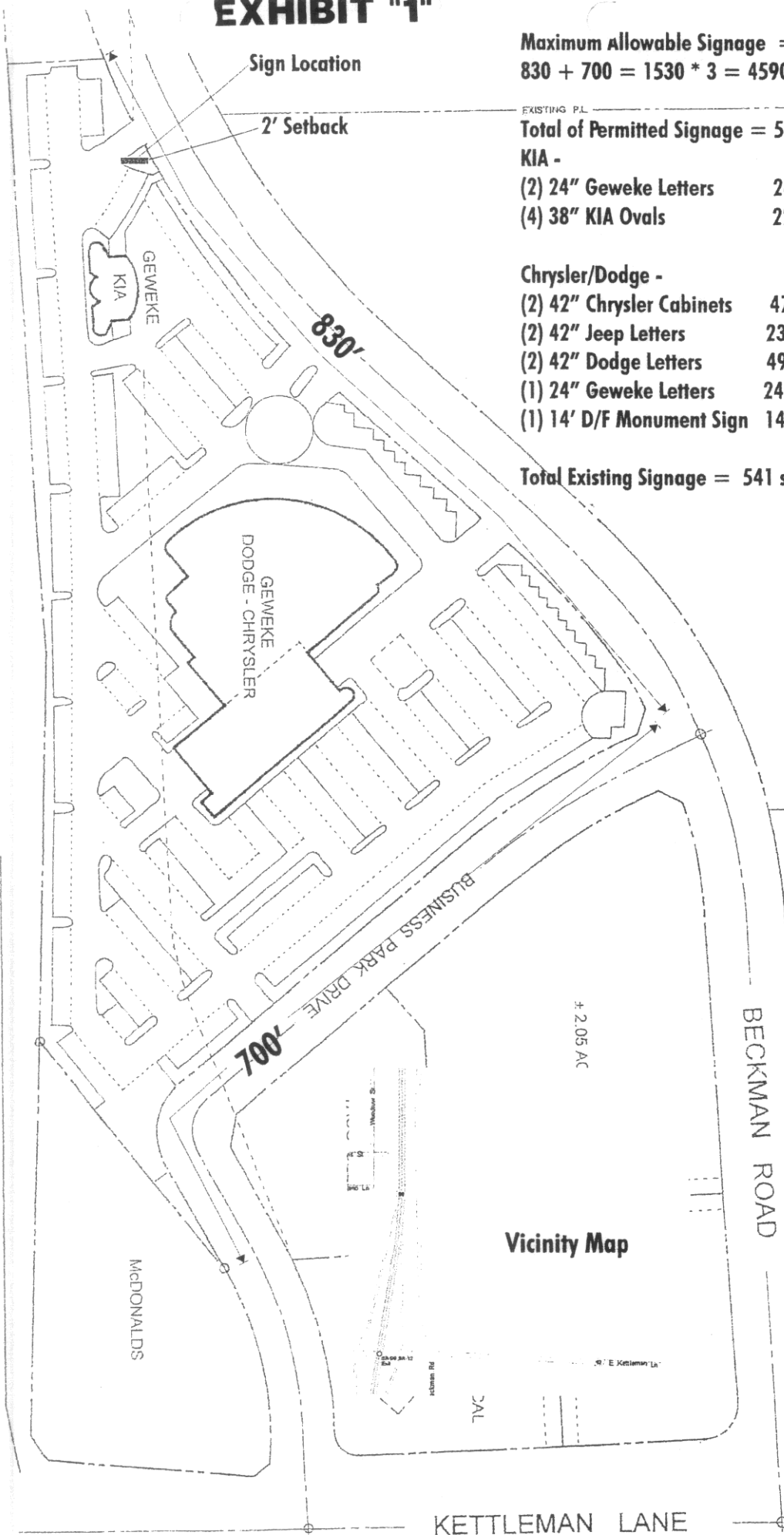
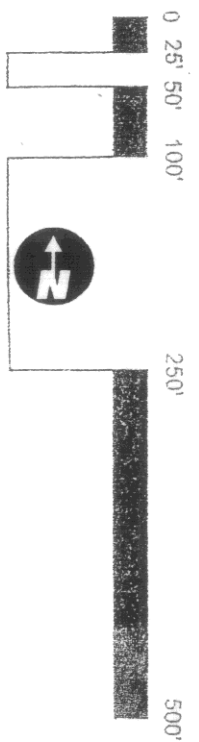
**FUNDING:** None

  
\_\_\_\_\_  
Konradt Bartlam  
Community Development Director

KB/MM/lw

Attachments

# EXHIBIT "1"



Maximum Allowable Signage = 3442  
 $830 + 700 = 1530 * 3 = 4590 * .75 = 3442$

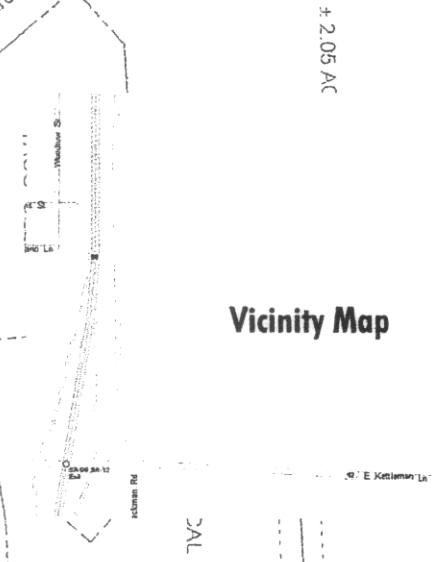
EXISTING PL  
 Total of Permitted Signage = 541 Sq. Ft.

KIA -  
 (2) 24" Geweke Letters 24 sq.ft. Ea. = 48 sq.ft.  
 (4) 38" KIA Ovals 22 sq.ft. Ea. = 88 sq.ft.

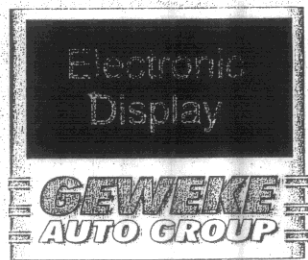
Chrysler/Dodge -  
 (2) 42" Chrysler Cabinets 47 sq.ft. Ea. = 94 sq.ft.  
 (2) 42" Jeep Letters 23 sq.ft. Ea. = 46 sq.ft.  
 (2) 42" Dodge Letters 49 sq.ft. Ea. = 98 sq.ft.  
 (1) 24" Geweke Letters 24 sq.ft. Ea. = 24 sq.ft.  
 (1) 14' D/F Monument Sign 143 sq.ft. = 143 sq.ft.

Total Existing Signage = 541 sq.ft.

## Vicinity Map



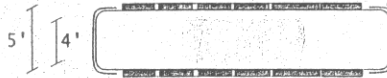
# EXHIBIT "2"



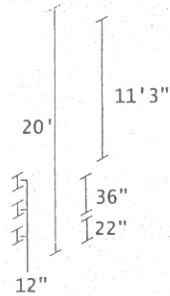
BACK

6" Radius Curve

TOP



FRONT

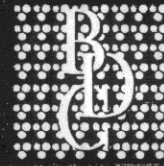


SIDE



Access Door

75' O.A.H



Bumstead Display Consulting

Project: Geweke Auto Group Pylon

Date: 6 - 18 -2003

## Specifications:

Manufacture and install single faced pylon sign.

"GEWKE" to be 36" tall internally illuminated channel letters with red L.E.D. illumination. L.E.D. spacing to be at or above manufacturer's specification to ensure even illumination.

"AUTO GROUP" to be 22" tall internally illuminated channel letters with white L.E.D. illumination. L.E.D. spacing to be at or above manufacturer's specification to ensure even illumination.

Neon Border Tubes to be mounted on flat cut out aluminum (.10 thickness) shaped to contour with radiused cabinet and pegged off of cabinet surface 2". Neon to be 15mil ruby red and powered with 30ma transformers to be located inside sign.

Sign Cabinet & Pole Cover to be all steel construction for framing and skinned with aluminum sheet (minimum .10 thickness). Cabinet shall have side entry door with lock to allow for internal servicing. Cabinet shall also include catwalks adequate for service of entire sign from inside.

Electronic Sign shall be L.E.D.

Bumstead Display Consulting  
12806 SE 45th Pl.  
Bellevue, WA 98006  
Phone - 425-643-4475  
Fax - 425-865-8357  
E-mail - design@bumstead.net

Scale: 1"=10'



# EXHIBIT "3"

## Project Description:

Install freestanding sign(s) as per attached drawings. A portion of the sign shall have an electronic display.

## Applicant Proposal/Request for Use Permit:

1. Applicant would like to have portion of sign be electronic display to operate under the following conditional use:
  - a. Sign shall not portray any motion
  - b. Sign shall not change images more frequently than once each 5 seconds
  - c. Sign shall not display any backgrounds with more than 25% of the screen area in white.
  - d. Sign shall be dimmed below 500 nits during nighttime operation.
  - e. Sign shall not display companies, products or services that are not sold on the site for which the permit is issued.
2. Applicant will agree to abstain from installing any other electronic displays on any of its other properties within the city limits of Lodi, CA.
3. Applicant would like to have sign area calculated on only one face of the display as is done for off-premises signs in section 17.63.370(C) of the Lodi Municipal Code allowing applicant to install one double faced sign instead of two single faced signs.
4. Applicant would be willing to share 10% of time promoting downtown Lodi, Wine and Visitor Center events and community not for profit events such as Lodi Street Faire, Oooh Ahhh Festival and Chamber of Commerce Wine Stroll etc.
5. Applicant would be willing to offer up participation and cooperate with the National Amber Alert program.

middle class as service workers anywhere. They owned houses, raised families, took comfort in belonging to America's company-based health care systems. Along comes Wal-Mart. The world's largest business whose revenues equal an astounding 2% of the United State's Gross Domestic Product, and whose power rivals that of great trusts of a century ago. Specifically Wal-Mart resembles the great Atlantic and Pacific Tea Company, which in its heyday owned 80% of the supermarket business until Washington used the trust laws to whittle it down to size. Wal-Mart plans to open 300 Supercenters this year alone. That includes new stores and expansions of existing stores to add grocery departments directly in competition with Safeway, Vons, Ralph's, Albertsons, and many other stores currently who were involved in the strike lock out just recently. Forty Supercenters are planned for California in coming years. Wal-Mart has the distinction of having four of its own Walton owners ranked among the Americas 10 richest people according to Forbes magazine. The Walton's do especially well because their employees do especially poorly. With clerks earning on the average of 40% less than unionized workers and receiving either marginal health care coverage or none at all, the chain keeps its prices low and owners rich. Last year the five Walton heirs saw their net worth increase from \$94 billion to \$102 billion. Wal-Mart's remarkable growth raises this question. How will blanketing the nation in Supercenters affect our communities? In 1948 the A and P's abuses were flagrant enough that the government used the Robinson Patman-Act to enjoin the company from using price discrimination to drive smaller grocers out of business. But antitrust vigor has faded in our globalized world allowing mastodons to stroll the earth again. Happy with low prices, Wal-Mart customers don't connect those prices to the demise of the neighborhood stores. The influx of illegal immigrants or the use of foreign suppliers to replace U.S. companies. Antitrust law once saw its goal as the organization of industry in small units that can effectively compete against each other. Wal-Mart has replaced the A and P as the grocery leviathan. Changing the face of whole communities is this right. In the economic theory the answer is yes. In economic theory pure competition drives down prices in everyone's benefits, consumers with lower prices, owners with greater profits, workers with higher wages. In the real world competition is never pure, which is why antitrust legislation was written. The risk to society was that Standard Oil, Alcoa, or A and P, would lower prices to drive competitors out of business and then raise the prices.

Council Member Land suggested that the issue of vesting be brought back for consideration in an expeditious manner. He was sure that the initiative proponents would get the required number of signatures to qualify the petition and stated that if the voters approve it and Wal-Mart moves forward with the Supercenter, he would personally picket their store "for as long as it takes."

Mayor Hansen asked that the moratorium issue be placed on the next regularly scheduled City Council meeting agenda.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider an appeal received from Key Advertising, Inc., regarding the Planning Commission's decision to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign and a Variance to double the maximum allowable sign area from 480 square feet to 960 square feet to be located at 1251 South Beckman Road.

Community Development Director Bartlam stated that this is an appeal of the Planning Commission's decision on February 11. The appellant, Key Advertising, is proposing to construct a two-sided, 75-foot-tall (960 square feet in area) freeway identification sign on the existing Dodge/Kia car dealership property along Beckman Road at Highway 99. Each side of the sign has a 245 square foot area devoted to an electronic display. The Planning Commission denied both requests for a use permit and variance. The use permit for the

electronic display was denied on the grounds of size, location, and appearance. The Commission felt that an electronic display of this type was not consistent with the City's General Plan and, in particular, the aesthetic qualities of Lodi's major streets and entrances. Staff also pointed out other issues such as potential impacts to highway traffic, the City's inability to regulate content, and setting precedence for other electronic displays. The variance issue pertained to the size of the sign. The Lodi Zoning ordinance allows a maximum sign of 480 square feet and the request is double that area. Existing state law requires that when a variance is requested, the applicant or Commission must make the finding that there is something unique about the property presenting a hardship that other properties of similar size or location or zoning designation enjoy that this property would not. Mr. Bartlam stated that, in either case, the applicant did not propose any hardship. Staff was unable to find what is unique about this property that is not enjoyed by others. It has excellent visibility both from the freeway and adjacent roadways. Staff recommends that Council concur with the Planning Commission's decision and deny the appeal.

In response to questions posed by Mayor Pro Tempore Beckman, Mr. Bartlam stated that the applicant could place signs up to 75 feet high on each of the properties they own. The height of the sign is not at issue, it is the square footage of the sign on top of the pole. He acknowledged that at the Planning Commission meeting, Dale Gillespie, on behalf of Key Advertising, proposed a range of concessions.

Mayor Hansen read the following letter submitted by the Chamber of Commerce:

*April 21, Dear City Council: The Lodi Chamber of Commerce Board of Directors has considered the matter before you tonight in regard to Item G-1. The Chamber Board is in support of this 75-foot electronic display sign and asks you provide Key Advertising and Geweke auto group a variance for this sign. While the Board recognizes the sign's two sides combined are in excess of the allowable square footage limitation we believe the sign should be given a variance. Being a two-sided display and only seeing one side per viewing, each side is within the size limitation specification, therefore keeping the spirit of the 480 limit. Also the auto group is offering the community generous mitigation in the way of community service bulletins, joining the Amber Alert System, and proposing that this sign do the duty of several different dealerships, thus actually reducing the potential number of pylon signs. The Chamber Board asks you to support this appeal and grant the variance for Key Advertising's request.*

Council Member Howard pointed out that the Union 76 Gas Station sign at the corner of Beckman Road and Kettleman Lane is much taller than 75 feet.

Mr. Bartlam replied that a variance was approved by the Planning Commission in exchange for tabulating sign area.

Council Member Howard disclosed that she met with Dale Gillespie and a representative from Geweke prior to the meeting. She had requested they provided color photos showing what multiple signs on the properties would look like, versus one, which they have done.

In response to Council Member Hitchcock, Interim City Attorney Schwabauer stated that the City could enter into a development agreement with the developer that would run with the land.

Mr. Bartlam confirmed that a development agreement would be the appropriate vehicle to use (not a variance) if Council wished to allow consolidation of the signage, as has been suggested by Mr. Gillespie. The development agreement is a contract between the City Council and the applicant. The finding for hardship (necessary for a variance) is not relative to the electronic sign; it is relative to the size of the sign. The use permit relates to the electronic sign and whether it is consistent with the City's General Plan, Zoning Ordinance, and the betterment of the community.

Hearing Opened to the Public

- Dale Gillespie proposed that the variance and use permit be approved including a condition that a development agreement be drafted and brought back to Council at a future date that would restrict all of the Geweke properties' ability to place any more pylon signs, in exchange for having the one large electronic sign. He pointed out that the hardship (required for the variance) is self imposed in this case, as Geweke has the ability to put numerous pylon signs on its properties as it develops. Geweke believes it is aesthetically more appealing to have one sign advertising the entire dealership group, than to have many separate signs. Geweke does wish to retain the right to place monument signs to identify each dealership from passing cars. If Council approved this request, he would negotiate with the Toyota Motor Company to eliminate the pylon sign on that property and incorporate its advertising on the electronic sign. In addition, if Council approves the land exchange under Item G-2, advertising for that property would also be incorporated onto the electronic sign. He reported that in 2003 over 55% of Geweke's auto sales came from outside the Lodi, Woodbridge, Lockeford, Acampo area. Geweke is offering to donate 10% of the time the sign is on to the Chamber of Commerce, Lodi Downtown Business Partnership, Winegrape Commission, Lodi Conference and Visitors Bureau, and the City of Lodi for community service type messages.

Mayor Hansen disclosed that he also met with Dale Gillespie prior to the meeting.

Mr. Bartlam stated that the Lodi Zoning Code does not allow this sign, or any sign adjacent to Highway 99, to advertise anything except goods and services sold on the property; however, with a development agreement it could be done.

Council Member Hitchcock commented that she was opposed to electronic signs in general, due to traffic safety issues.

- Michael Parker stated that the Priority One company owns "Billboards on Six Wheels," which are mobile 300 square foot electronic signs. They are used throughout the Los Angeles area when Council's will not allow permanent electronic signs.

Public Portion of Hearing Closed

MOTION:

Mayor Pro Tempore Beckman made a motion, Hansen second, to continue the subject public hearing to June 2, 2004, and directed staff to negotiate a development agreement for Council consideration.

DISCUSSION:

Mayor Hansen asked Mr. Bartlam to find out whether Manteca has encountered any problems with a similar sign that it has in its city and report back to Council.

Council Member Land disclosed that he spoke with Dale Gillespie earlier in the week.

Mr. Bartlam directed Council's attention to exhibit 3 in the staff report (filed). Item 1e states that the sign shall not display companies' products or services that are not sold on the site for which the permit is issued, which is in conflict with the consolidation issue. Item 2 suggests that they will abstain from installing other electronic displays on other properties in the City, which is being offered as part of the development agreement. He pointed out that Geweke is not including the Recreational Vehicle (RV) dealership sign in the consolidation offer.

Mayor Hansen stated that the development agreement should ensure that no additional signs would be installed, that it would be binding on future and existing landowners, and that it be the sign proposed of 480 square feet on each side. In addition he asked Mr. Bartlam to negotiate with Mr. Gillespie to obtain a concession on the RV dealership sign.

Mayor Pro Tempore Beckman recommended that Item 1e be removed, as it is inconsistent, and attempt to negotiate a development agreement including the remainder of the applicant's proposal.

Council Member Hitchcock approved of the small monument signs and to allow the separate RV sign.

VOTE:

The above vote carried by a unanimous vote.

RECESS

At 9:08 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 9:20 p.m.

G. PUBLIC HEARINGS (Continued)

- G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider redesign concept for C-Basin (Pixley Park) and the exchange of properties with G-REM, Inc., to allow the relocation of C-Basin.

Public Works Director Prima reported that the City has owned a majority of the property now known as Pixley Park C-Basin (located east of Highway 99) since the early 1960s. Dale Gillespie of G-REM, Inc. Development, Construction, Management, representing the Geweke auto organization, would like to obtain the portion of the basin fronting Beckman Road at the corner of Vine Street. In exchange, the City would acquire the rear portion of the Toyota dealership property and additional property further south. The acreage of the "land swap" would be the same. The master plan prepared by Geweke has been brought before the Parks and Recreation Commission. Geweke has offered to do the excavation and grading for the City's property. The configuration of the site allows for four softball diamonds. Mr. Prima noted that the Tokay Model Airplane Radio Control Club has been using the Pixley Park area for many years and has asked the City to help them find another location. The White Slough property has been considered for their use, as well as County landfill sites.

In reply to Council Member Hitchcock, Mr. Prima stated that he did not have an appraisal done of the property. He noted, however, that there are major costs associated with making the property that the City is relinquishing, ready to develop. The basin will have to be filled, which will be a significant cost. In order to connect the new basin to the ditch along Beckman Road there needs to be an extension of a storm drain pipe that cuts across the north end of the property, which would substantially encumber it.

Community Development Director Bartlam added that another tangible benefit to the City is having a fully developable piece of property that can be part of the Geweke Auto Mall, which is a significant sales tax generator.

NEGATIVE DECLARATION NO. ND-04-06

FOR

The Development Agreement By and Between  
City of Lodi and GFLIP III LP

File No.:

APPLICANT: Key Advertising

PREPARED BY:

CITY OF LODI  
Community Development Department  
P.O. BOX 3006  
LODI, CA 95241

September 2004

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**PROJECT DESCRIPTION:**

The applicant, Key Advertising, is seeking approval of a Development Agreement with the City of Lodi to construct a 75-foot tall freeway information sign near the north end of the Geweke Dodge and Kia Dealership at 1251 South Beckman Road. The sign is 24-feet wide by 20-feet tall on both sides, for a total of 960 square-feet of signage. Each side has a 21-foot 8-inch wide by 11-foot 3-inch tall, 245 square-foot electronic message center panel. The electronic message center is essentially a television and/or computer monitor. The remaining sign area is proposed to state "Geweke Auto Group." Given the size, height, and placement of the sign, it is primarily designed for viewing by motorists on State Highway 99. The applicant and the City are entering into this Development Agreement as a compromise that gives the applicant a larger sign with an electronic message display, which would otherwise require a use permit and a variance, and the City receives a guarantee that the applicant will not construct any additional freeway information signs on his properties and will remove two existing freeway information signs on existing properties.



## ENVIRONMENTAL CHECKLIST FORM

1. Project title:  
The Development Agreement By and Between City of Lodi and GFLIP III LP
2. Lead agency name and address:  
City of Lodi-Community Development Department  
Box 3006, Lodi, CA 95241
3. Contact person and phone number:  
Mark Meissner  
(209) 333-6711
4. Project location:  
1251 South Beckman Road;  
Lodi, CA 95240.
5. Project sponsor's name and address:  
Key Advertising  
1020 South Beckman Road  
Lodi, CA 95240
6. General Plan designation: LI, Light Industrial.
7. Zoning: M-1, Light Industrial.
8. Description of project: See attached "Project Description"
9. Surrounding land uses and setting: The project site is a triangular shaped property fronting on Business Park Drive on the south, Beckman Road on the east, and the Highway 99 northbound on-ramp on the west. The site is fully developed as the Geweke, Dodge and Kia automotive dealerships. This area of the City is seeing an increase in attention in the development of auto dealerships and auto/transient-oriented businesses. The majority of land surrounding the project site is owned and controlled by the applicant, whose desire is to develop this area as an auto mall with associated transient oriented services. Another local auto dealership owner is moving his interests to this area.
10. None.

### ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a (Potentially Significant Impact") by the checklist on the following pages.

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Land Use and Planning          | <input type="checkbox"/> Transportation/Circulation         | <input type="checkbox"/> Public Services               |
| <input type="checkbox"/> Population and Housing         | <input type="checkbox"/> Biological Resources               | <input type="checkbox"/> Utilities and Service Systems |
| <input checked="" type="checkbox"/> Geological Problems | <input type="checkbox"/> Energy and Mineral Resources       | <input type="checkbox"/> Aesthetics                    |
| <input type="checkbox"/> Water                          | <input type="checkbox"/> Hazards                            | <input type="checkbox"/> Cultural Resources            |
| <input checked="" type="checkbox"/> Air Quality         | <input type="checkbox"/> Noise                              | <input type="checkbox"/> Recreation                    |
|   | <input type="checkbox"/> Mandatory Findings of Significance |  |

## ENVIRONMENTAL IMPACTS:

### I. LAND USE AND PLANNING. *Would the proposed:*

	Potentially Significant Impact	Potentially Significant Unless mitigation Incorporated	Less than Significant Impact	No Impact
a) Conflict with general plan designation or zoning?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be incompatible with existing land use in the vicinity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Affect agricultural resources or operations (e.g., impacts to soils or farmlands, or impacts from incompatible land uses)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### II POPULATION AND HOUSING. *Would the proposal:*

a) Cumulatively exceed official regional or local population projections?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Induce substantial growth in an area either directly or indirectly (e.g., through projects in an undeveloped area or extension of major infrastructure)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace existing housing, especially affordable housing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### III. GEOLOGIC PROBLEMS. *Would the proposal result in or expose people to potential impacts involving:*

a) Fault rupture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Seismic ground shaking?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Seismic ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Seiche, tsunami, or volcanic hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Erosion, changes in topography or unstable soil conditions from excavation, grading or fill?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Subsidence of land?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expansive soils?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Unique geologic or physical features?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IV. WATER. Would the proposal result in:**

*All "No" – Reference Source: See Project Description*

	Potentially Significant Impact	Potentially Significant Unless mitigation Incorporated	Less than Significant Impact	No Impact
a) Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of people or property to water related hazards such as flooding?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Discharge into surface waters or other alteration of surface water quality (e.g., temperature, dissolved oxygen or turbidity)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Changes in the amount of surface water in any water body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Changes in currents, or the course or direction of water movements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Change in the quantity of ground water, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavation or through substantial loss of ground water recharge capability?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Altered direction or rate of flow of groundwater?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Impacts to groundwater quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Substantial reduction in the amount of groundwater otherwise available for public water supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**V. AIR QUALITY. Would the proposal:**

*All "No" Reference Source: Appendix H, #25 & Environmental Setting, Sec. 3.3:*

a) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Expose sensitive receptors to pollutants?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Alter air movement, moisture, or temperature, or cause any change in climate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create objectionable odors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VI. TRANSPORTATION/CIRCULATION. Would the proposal result in:**

*All "No" Reference Source: See Project Description*

a) Increased vehicle trips or traffic congestion?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Hazards to safety from design feature, (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Inadequate emergency access or access to nearby uses?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Insufficient parking capacity onsite or offsite?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Hazards or barriers for pedestrians or bicyclists?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Conflicts with adopted policies supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Rail, waterborne or air traffic impacts?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VII. BIOLOGICAL RESOURCES.** Would the proposal result in impacts to:

	Potentially Significant Impact	Potentially Significant Unless mitigation Incorporated	Less than Significant Impact	No Impact
a) Endangered, threatened or rare species or their habitats (including but not limited to plants, fish, insects, animals, and birds)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Locally designated species (e.g., heritage trees)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Locally designated natural communities (e.g., oak forest, coastal habitat, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Wetland habitat (e.g., marsh, riparian, and vernal pool)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Wildlife dispersal migration corridors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**VIII. ENERGY AND MINERAL RESOURCES.** Would the proposal:

a) Conflict with adopted energy conservation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Use nonrenewable resources in a wasteful and inefficient manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**IX. HAZARDS.** Would the proposal involve:

a) A risk of accidental explosion or release of hazardous substances (including, but not limited to, oil, pesticides, chemicals, or radiation)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Possible interference with an emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) The creation of any health hazard or potential health hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Exposure of people to existing sources of potential health hazards?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Increased fire hazard in areas with flammable brush, grass, or trees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**X. NOISE.** Would the proposal result in:

a) Increase in existing noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of people to severe noise levels?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XI. PUBLIC SERVICES.** Would the proposed have an effect upon, or result in a need for new or altered government services in any of the following areas:

a) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Police protection?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Maintenance of public facilities, including roads?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Other government services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XII. UTILITIES AND SERVICE SYSTEMS.** *Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities:*

	Potentially Significant Impact	Potentially Significant Unless mitigation Incorporated	Less than Significant Impact	No Impact
a) Power or natural gas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Communications systems?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Local or regional water treatment or distribution facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Sewer or septic tanks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Storm water drainage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Solid waste disposal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Local or regional water supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XIII. AESTHETICS.** *Would the proposal:*

a) Affect a scenic vista or scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b) Have a demonstrable negative aesthetic effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Create light or glare?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**XIV. CULTURAL RESOURCES.** *Would the proposal:*

a) Disturb paleontological resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Disturb archaeological resources?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Have the potential to cause a physical change which would affect unique ethnic cultural values?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Restrict existing religious or sacred uses within the potential impact area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**XV. RECREATION.** *Would the proposal:*

a) Increase the demand for neighborhood or regional parks or other recreational facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Affect recreation opportunities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## XVI. MANDATORY FINDINGS OF SIGNIFICANCE

	Potentially Significant Impact	Potentially Significant Unless mitigation Incorporated	Less than Significant Impact	No Impact
a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number of restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or pre-history?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

## XVII. EARLIER ANALYSES.

Earlier analyses may be used where, pursuant to the tiering, program EIR, or other CEQA process, one or more effects have been adequately analyzed in an earlier EIR or negative declaration. Section 15063(c)(3)(D). In case a discussion should identify the following or attached sheets.

- a) Earlier analyses used. None.
- b) Mitigation measures. See attached Summary for discussion.

DETERMINATION:

On the basis of this initial evaluation:

- ☒ I find that the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE** declaration will be prepared.
- ☐ I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A **NEGATIVE DECLARATION** will be prepared.
- ☐ I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- ☐ I find that the proposed project **MAY** have a significant effect(s) on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets' if the effect is a "potentially significant impact" or "potentially significant unless mitigated."
- ☐ I find that although the proposed project could have a significant effect on the environment, there **WILL NOT** be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project

Signature: 

Date: 9-20-04

Printed Name: MARK MEISSNER

For: City of Lodi

## SUMMARY OF POTENTIAL IMPACTS:

### Discussion of Land Use and Planning Finding

#### **No Impact (b, c, d, e)**

The sign is located in the City's M-1, Light Industrial zoning district adjacent to the east of State Highway 99. The sign will be located in an existing auto dealership and takes up a very minimal area of land on this site. The sign is compatible with the existing land use and zone. The sign does not have the ability to impact agricultural operations, nor does it disrupt or divide the physical arrangement of an established community.

#### **Less than Significant (a)**

The project is the adoption of a Development Agreement that allows the applicant to construct a 75-foot tall 480 sq. ft. per side electronic message center sign for the purposes of advertising the Geweke Auto Group's many existing and planned interests in the immediate area to the motoring public on State Hwy. 99. The agreement includes a guarantee from the applicant that no additional freeway information signs will be constructed on properties under his ownership, and includes the removal of two existing freeway information signs at two locations in the immediate area in exchange for the approval of a Use Permit for the electronic message center, and a Variance to allow twice the maximum square footage of sign area.

The majority of the area in the project vicinity is zoned M-1, Light Industrial, and has a General Plan Land Use Designation of LI, Light Industrial. Automotive dealerships are permitted uses in this zone and their advertising signs are allowable when in compliance with the City's Sign Ordinance. The proposed sign is in compliance for its height of 75-feet; however, the amount of signage (960 sq. ft.) exceeds the allowable maximum by two times which would otherwise require approval of a Variance, and the electronic message center would otherwise require use permit approval.

The new sign will be constructed on the property of the existing Dodge and Kia auto dealership at 1251 South Beckman Road just north of East Kettleman Lane and adjacent to Hwy. 99's east frontage. Most of the land and businesses adjacent to the project site were purchased by the applicant with the intent of development as auto/transient oriented businesses. In this area adjacent to the freeway, business owners are allowed to construct Freeway Information signs for identification from the freeway. Given that many of the properties just east of the highway are owned by the applicant, it is possible that there could be several freeway information signs. The Applicant and the City of Lodi are entering into this development agreement as a compromise that assures the Applicant a fair amount of exposure of his businesses to freeway traffic and guarantees the City that the area will not be cluttered with several 75-foot tall freeway information signs.

### Discussion of Population and Housing Findings

#### **No Impact (a, b, c)**

The sign is located in the City's M-1, Light Industrial zoning district adjacent to the east of State Highway 99; housing is not a permitted use in this zone. The sign does not have the ability to impact housing or induce growth within Lodi.



### **Discussion of Geologic Problems Finding**

#### **No Impact: a, b, c, d, e, f, g, h, i**

In general Lodi is considered to be an area of relatively low seismicity in a state characterized by moderate-to-high seismic activity. There are several fault zones within San Joaquin County and neighboring counties that could affect the proposed project. These include the concealed Tracy-Stockton Fault approximately 12 miles to the southwest and the concealed Midland Fault zone, approximately 20 miles to the west. The Melones Fault is 36 miles to the east, and the Green Valley-Concord and Hayward faults are 46 and 52 miles, respectively to the west. Therefore, no impacts created by fault rupture are expected as a result of the project. The project area is located in Seismic Zone 3 pursuant to the Uniform Building Code. The routine implementation of City of Lodi policy, that all proposed structures shall be built in accordance with the Uniform Building Code for this seismic area. Therefore no impacts resulting from ground shaking is expected as a result of this project. The soil type within the project area is classified as Tokay fine sandy loam, hardpan substratum. This soil classification has a fair strength value according to the AASHTO standard. Therefore, no seismic ground failure is expected as a result of this project. The nearest water body to the project site is the Mokelumne River, approximately 2 miles north of the site. Therefore, no impacts associated with the risk of upset created by seiche, tsunami or volcanic hazards are expected as a result of this project. In addition to a fair AASHTO strength standard, the Tokay fine sandy loam in the area has a low shrink-swell potential, making the soil suitable for cutting or filling. Given the close proximity of the Mokelumne River, no impacts created by the subsidence of land are expected with this project. Neither the Tokay fine sandy loam or Tokay fine sandy loam with hardpan substrate are expansive soil types nor are there any unique geologic or physical features present on either project site.

### **Discussion of Water Finding**

#### **No Impact: b, c, d, e, f, g, h, I**

The proposed sign does not have a water feature or any other water requirements. The nearest body of water is the Mokelumne River, which is approximately 2-miles to the north. The sign's footing will not be deep or large enough to have any impact on underground water or its recharge. The sign pole is not large enough to create an impediment or divert the flow of floodwaters.

### **Discussion of Air Quality Finding**

#### **Less than Significant: a, b, c, d**

The proposed sign does not produce any emissions, so it does not have the capability of exposing sensitive receptors to pollutants. The sign is large, but is not large enough to alter air movement, or create any changes in ambient temperature or climatic changes. Again there are no emissions of any sort so there will be no objectionable odors due to the installation of the sign.

### **Discussion of Traffic/Circulation Finding**

#### **No Impact: a, c, d, e, f, g**

The proposed sign is intended to advertise goods and services of the Geweke Auto Group, which includes a number of auto dealerships on and around the project site. The sign will not create increased vehicle trips or traffic congestion given that the traffic it is intended reach are the existing motorists traveling on Highway 99. The sign will be placed near the north end of the existing dealership in a location outside of any required driveways, sidewalks, or other points of access to the site. Most likely the sign will placed within a landscaped planter. The sign will not be placed in a required parking area for automobiles or bicycles, nor will it be placed to block or obstruct pedestrian or emergency vehicle access to the dealership. Installation of a sign in the City of Lodi does not trigger requirements for the provision of alternative transportation. There are no railways or waterways on the project site; therefore there will be no impacts.

#### **Less than Significant Impact: b**

Staff has concerns that the electronic message center portion of the sign may be a distraction to traffic on Highway 99; however, the State of California Outdoor Advertising Act and the Department of Transportation permit electronic message centers under specific conditions intended to reduce their impact to less than significant levels. The Applicant shall obtain all necessary permits and approvals from the State of California Department of Transportation and the City of Lodi Community Development Department.

### **Discussion of Biological Resources Finding**

#### **Less than Significant Impact: a, b, c, d, e**

The proposed projects are consistent with the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), as amended, as reflected in the conditions of project approval for this proposal. Pursuant to the Final EIR/EIS for the San Joaquin county Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), dated November 15, 2000, and certified by the San Joaquin Council of Governments on December 7, 2000, implementation of the SJMSCP is expected to reduce impacts to biological resources resulting from the proposed project to a level of less-than-significant. That document is hereby incorporated by reference and is available for review during regular business hours at the San Joaquin Council of Governments (6 S. El Dorado St., Suite 400/Stockton, CA 95202) or online at: [www.sjcog.org](http://www.sjcog.org). The sign is located on a fully developed property outside of any pay area as defined by the SJMSCP. In any case, given that the site is fully developed as an auto dealership it is safe to say that there is no habitat value on the site for the sign to impact.

### **Discussion of Energy and Mineral Resources Finding**

#### **No Impact a, b, c**

The electronic message center of the proposed sign will be illuminated, but it is not designed to use an inordinate amount of electricity, or an amount that would otherwise be defined as wasteful or inefficient. There are no known mineral deposits on either site; therefore, the project will not result in a loss of availability of any known mineral resource.

### **Discussion of Hazards Finding**

#### **No Impacts: a, b, c, d, e**

The proposed sign does not involve the use of any hazardous substances. The sign is a stationary object does not have the ability interfere with emergency response plans or evacuation plans. The sign is not capable of creating or exposing people to health hazards. The sign has no design elements that could increase the risk of fire. The sign is located on an existing auto dealership where flammable brush, grass, or trees are not present.

### **Discussion of Noise Finding**

#### **No Impact: b**

The sign does not have any means of producing sound, and is not designed with any noise making devices, such as speakers, horns, etc.

### **Discussion of Public Services Finding**

#### **No Impact a, b, c, d, e**

The sign is privately owned and funded, so its installation will not result in the need for additional public services.

### **Discussion of Utilities and Service Systems Finding**

#### **No Impact: a, b, c, d, e, f, g**

The proposed sign is located on an existing auto dealership, which has electrical services that the sign can connect to.

### **Discussion of Aesthetics Finding**

#### **No Impact: a**

The sign is adjacent to State Highway 99, which is not defined as a scenic highway at any point within the City of Lodi. Furthermore, there are no scenic vistas for the sign to obscure or block.

#### **Less Than Significant: b, c**

The sign cabinet and pole, as well as the pole cover framework will be constructed of steel. The steel box and sign cabinet will be skinned with aluminum sheeting that has a stucco like texture. The sign will be painted to match the colors of the buildings of the auto dealership, which is a beige or taupe color. The pole cover is ten feet wide and three and a half feet thick with 6-inch rounded over edges to smooth out its appearance. The purpose of the pole cover is to create the appearance of a substantial base to the cabinet. Without the pole cover, the sign cabinet would appear to be balanced on a spindly, telescoping pole that does not appear to be able to hold up the sign.

The sign cabinet is made of the same material and design of the pole cover for a uniform appearance. The sign cabinet is not internally illuminated, which also enhances the appearance of the sign. This sign will be the only non-internally illuminated cabinet, of all of the existing freeway information signs along Highway 99 through Lodi. The only part of the sign that will be lit are the individual internally illuminated channel letters attached

to the outside of the cabinet in similar fashion to the letters one would find on a commercial building. Other lighting includes, the exposed neon tubes that wrap the ends of letters at the bottom of the sign cabinet, and the electronic message center above the letters.

As far as light and glare are concerned; the proposed sign will be illuminated, which could create a significant amount of light and glare at night. As stated above, the lower portion of the sign that reads "Geweke Auto Group" is made of individual raised and internally illuminated letters. This part of the sign will not create a light or glare impact because the light is contained inside the letters and will only filter through the semi transparent acrylic faces. The exposed red neon tubing accent stripes that wrap the ends of the cabinet in line with the lettering may be bright but the red color itself tends to be its own filter for glare. Given that the sign is located along the east frontage of the freeway, in an industrial zone, and 75-feet in the air, there will not be many people in the area to be impacted by the light. One concern of the City is with the electronic message center, which is essentially a television/computer monitor that can be distracting and bright. In order to reduce potentially distracting advertising and to reduce glare to motorists on the freeway, the City has a condition within the Development Agreement, which reads as follows: "The Project shall not portray any motion, shall not change images more frequently than once each five second, shall not display any backgrounds with more than twenty-five percent of the screen area in white, shall be dimmed below 500 nits during nighttime operations...." This condition is in compliance with the State of California, regulations for electronic message center signs visible from a State Highway.

Staff finds that the sign has an enhanced appearance, and is designed and conditioned to limit light and glare on the surrounding area.

### **Discussion of Cultural Resources Finding**

#### **No Impact: a, b, c, d**

Based on available information, it has been determined that no known paleontological or archaeological resources exist on the project site. There are no unique geologic conditions on site that would suggest an impact to cultural values or religious or sacred uses that may have occurred on the sites. No human remains are known to be located within the project site. If buried resources, such as chipped or ground stone, historic debris, building foundations, or human bone, are inadvertently discovered during ground disturbing activities, the routine implementation of City of Lodi standard policy will mitigate impacts to cultural resources to a level less than significant.

This standard policy requires that work stop in the immediate area and within 100 feet of the find until a qualified archaeologist can assess the significance of the find. If necessary, the archaeologist will develop appropriate treatment measures in consultation with the City of Lodi Public Works Department, State Office of Historic Preservation, and other appropriate agencies. If human remains of Native American origin are discovered during project construction, it will be necessary to comply with state laws relating to the disposition of Native American burials, which fall within the jurisdiction of the Native American Heritage Commission (NAHC) (Public Resources Code, Section 5097). If any human remains are discovered or recognized in any location other than a dedicated

cemetery, there will be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

1. The San Joaquin County Coroner has been informed and has determined that no investigation of the cause of death is required; and
2. If the remains are of Native American origin:
  - a. The descendants of the deceased Native Americans have made a recommendation to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code, Section 5097.98; or
  - b. NAHC was unable to identify a descendant or the descendant failed to make a recommendation within 24 hours of being notified by the NAHC.

According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052). Section 7050.5 requires that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. If the remains are determined to be Native American, the coroner must contact NAHC.

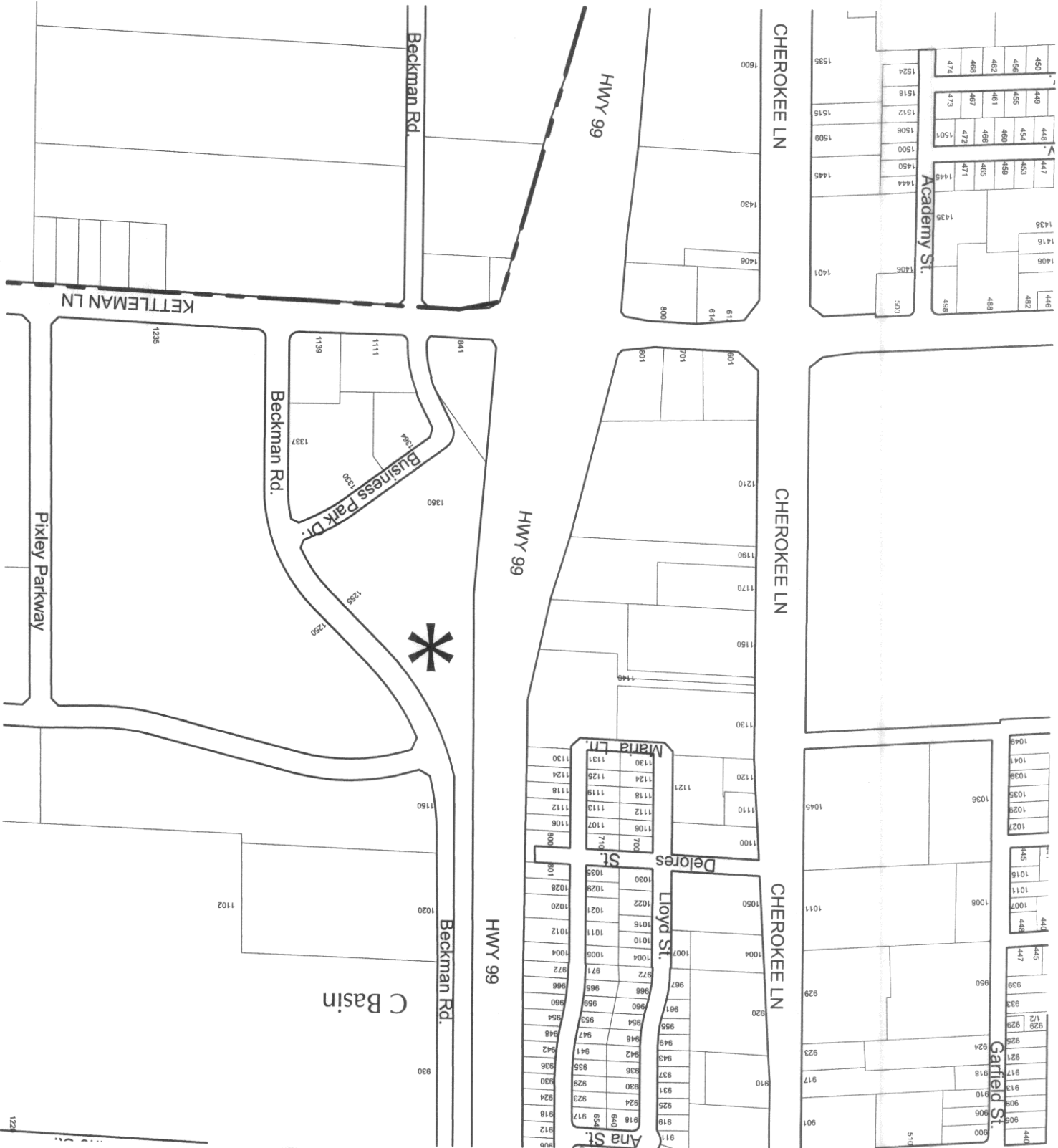
#### **Discussion of Recreation Finding**

##### **No Impact: a, b**

The sign is located on an existing auto dealership, which is not and never has been identified as a potential park site within the general plan or any specific plan. Therefore, no impacts to recreational opportunities are expected as a result of this project.

# VICINITY MAP

Key Advertising, Inc.  
Electronic Message Sign  
1251 South Beckman Road



**RESOLUTION NO. P.C 04-\_\_\_\_\_**

**A RESOLUTUION OF THE PLANNING COMMISSION OF THE CITY OF LODI  
RECOMMENDING CITY COUNCIL APPROVAL OF  
DEVELOPMENT AGREEMENT 04-01 AND CERTIFY NEGATIVE DECLARATION  
ND-04-06 FOR THE PROJECT**

WHEREAS, the Planning Commission of the City of Lodi has heretofore considered the request for the approval of Development Agreement 04-01, Negative Declaration ND-04-06; and

WHEREAS, Government Code Section 65864 et seq. authorizes cities to enter into a Development Agreement, and

WHEREAS, the Planning Commission, after conducting a public hearing and after consideration of all public comment, recommends that the City Council adopt Development Agreement 04-01 and Negative Declaration ND-04-06.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi as follows:

1. Development Agreement 04-01 conforms to the provision of the Planning and Zoning Law in the California Government Code Section 65864.
2. The Planning Commission hereby recommends to the City Council Development Agreement 04-01 and Negative Declaration ND-04-06.

Date: October 27, 2004

I hereby certify that Resolution 04-\_\_\_\_\_ was passed and adopted by the Planning Commission of the city of Lodi at a special meeting held October 27, 2004 by the following vote:

YES: Commissioners:

NOES: Commissioners:

ABSENT: Commissioners:

ABSTAIN: Commissioners:

ATTEST:

\_\_\_\_\_  
Secretary, Planning Commission

**RESOLUTION NO. P.C 04-48**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LODI  
RECOMMENDING CITY COUNCIL APPROVAL OF  
DEVELOPMENT AGREEMENT 04-01 AND CERTIFY NEGATIVE DECLARATION  
ND-04-06 FOR THE PROJECT**

WHEREAS, the Planning Commission of the City of Lodi has heretofore considered the request for the approval of Development Agreement 04-01, Negative Declaration ND-04-06; and

WHEREAS, Government Code Section 65864 et seq. authorizes cities to enter into a Development Agreement, and

WHEREAS, the Planning Commission, after conducting a public hearing and after consideration of all public comment, recommends that the City Council adopt Development Agreement 04-01 and Negative Declaration ND-04-06.

NOW, THEREFORE, BE IT FOUND, DETERMINED AND RESOLVED by the Planning Commission of the City of Lodi as follows:

1. Development Agreement 04-01 conforms to the provision of the Planning and Zoning Law in the California Government Code Section 65864.
2. The Planning Commission hereby recommends to the City Council Development Agreement 04-01 and Negative Declaration ND-04-06.

Date: October 27, 2004

I hereby certify that Resolution 04-48 was passed and adopted by the Planning Commission of the City of Lodi at a regular meeting held October 27, 2004 by the following vote:

YES: Commissioners: Heinitz, Mattheis, Moran, White, and Chairman Haugan

NOES: Commissioners:

ABSENT: Commissioners: Aguirre and Phillips

ABSTAIN: Commissioners:

ATTEST:

  
Secretary, Planning Commission



Nov 08 04 05:35p

G-REM

209-333-3445

p. 1

# G-REM, INC.

DEVELOPMENT, CONSTRUCTION, MANAGEMENT

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November 8, 2004

**SENT via FAX only 209 333 6842**

Mr. Rad Bartlam  
Community Development Director  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241

**RE: Development Agreement-Proposed Electronic Display Sign**

Dear Rad:

The purpose of this letter is to reiterate our request made at the October 27, 2004 Planning Commission meeting.

We are requesting a change to the Development Agreement that would allow the existing Geweke RV pylon sign to remain in place permanently. We are willing to 'remodel' the RV sign in terms of cladding the existing sign structure to match, (as close as possible), the proposed electronic display sign. The height and the message areas would remain the same size as the existing sign. The reason for the request to allow the RV sign to remain, which is consistent with our statements made during the April 21, 2004 Council meeting, is that the RV sales and service operation is marketed and advertised entirely independent of the auto sales operations. We have never marketed or advertised RV's and autos together, as they appeal to different markets. None of our advertising, including newspaper, billboard, TV, radio, and direct mail mix auto and RV sales in their messages. Though it is true that virtually every RV owner also owns a car or truck, RV sales is much more of a regional business, with over 60% of our sales coming from outside the Lodi/Stockton area. Also, no auto malls that I am aware of incorporate RV sales within their boundaries, likely for this difference in marketing strategy.

Please call me if you have any questions regarding this letter.

Sincerely,



Dale N. Gillespie  
Vice President/Director of Operations

When Recorded, Please Return to:  
Lodi City Clerk  
P.O. Box 3006  
Lodi, CA 95241-1910

RESOLUTION NO. 2004-257

A RESOLUTION OF THE LODI CITY COUNCIL APPROVING DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LODI AND GFLIP III, L.P., RELATING TO THE DEVELOPMENT KNOWN AS ELECTRONIC DISPLAY SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD, AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE DEVELOPMENT AGREEMENT 04-01 ON BEHALF OF THE CITY OF LODI

=====

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby approves Development Agreement 04-01, attached hereto marked Exhibit A, between the City of Lodi and GFLIP III, L.P., related to the development known as Electronic Display Sign to be located at 1251 South Beckman Road; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes and directs the City Manager to execute Development Agreement 04-01 on behalf of the City of Lodi.

Dated: November 17, 2004

=====

I hereby certify that Resolution No. 2004-257 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 17, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Howard, Land, and Mayor Hansen  
NOES: COUNCIL MEMBERS – Hitchcock  
ABSENT: COUNCIL MEMBERS – None  
ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON  
City Clerk

**EXHIBIT A**

XXXXXX

RECORDING REQUESTED BY:

City Clerk  
City of Lodi  
P.O. Box 3006  
Lodi, California 95241

AND WHEN RECORDED MAIL TO:

City of Lodi  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF LODI  
AND  
GFLIP III, LP  
RELATING TO THE DEVELOPMENT KNOWN AS  
ELECTRONIC DISPLAY SIGN  
TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA.

DEVELOPMENT AGREEMENT BY AND BETWEEN THE  
CITY OF LODI  
AND  
GFLIP III, LP, RELATING TO THE DEVELOPMENT KNOWN AS  
ELECTRONIC DISPLAY SIGN  
TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD  
AT LODI, CALIFORNIA

THIS DEVELOPMENT AGREEMENT (hereinafter this "Agreement") is entered into this 17th day of November, 2004 by and between the City of Lodi, a general law city, organized and existing under the laws of the State of California (hereinafter the "City", and GFLIP III, LP a California limited partnership (hereinafter the "Developer"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California. Developer and City are, from time to time, hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a development agreement with any person/entity having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein.

B. Pursuant to Government Code Section 65865(c), the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and executed in accordance with those City rules and regulations.

C. Developer owns that certain real property located at 1251 South Beckman Road. Developer proposes to construct a single seventy five foot high electronic display sign ("the Project"). This sign requires a variance to double the maximum allowable sign area from 480 square feet to 960 square feet. Developer has a legal interest in those certain parcels of land, consisting of approximately 58 acres as diagramed in Exhibit "B" attached hereto, and more particularly described in Exhibit "C" attached hereto and incorporated herein (the "Land"). However, the Developer could construct multiple display signs on the Land. The parties agree that allowing Developer to construct a single 75 foot high electronic display instead of multiple smaller signs on the Land is a superior aesthetic alternative and represents sound planning principles.

D. For the reasons recited herein, Developer and the City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning and provide for the orderly development

of the Project and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

In exchange for these benefits to the City, together with the public benefits that will result from the development of the Project pursuant to this Agreement, and the "Project Approvals, Developer desires to receive the assurance that it may proceed with the Project in accordance with Approvals, the Project Approvals, Subsequent Approvals and this Agreement and the ordinances, resolutions, policies, and regulations of the City in effect on the Effective Date of this Agreement, as hereinafter defined, pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the parties agree as follows:

### AGREEMENT

#### Section 1. General Provisions.

1.A. Incorporation of Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.B. Covenants. The provisions of this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project and the burdens and benefits hereof shall bind and inure to the benefit of all estates and interests in the Project, or any portion thereof, and all successors in interest, transferees or assignees to the parties hereto.

1.C. Effective Date. This Agreement shall become effective upon the thirtieth (30th) day following the adoption by the City Council of Resolution No. 2004-257 approving this Agreement, or the date upon which this Agreement is executed by Developer and by the City, whichever is later (the "Effective Date").

1.D. Term. The term of this Agreement shall commence upon the Effective Date and shall extend until December 31, 2050.

#### Section 2. Definitions. In this Agreement, unless the context otherwise requires:

2.A. "City" shall mean the City of Lodi.

2.B. "Developer" means GFLIP, III, LP, and includes the Developer's assignees and/or successors-in-interest.

2.C. "Effective Date" shall have that meaning set forth in Section 1.C of this Agreement.

2.D. "Geweke Family" is defined as Darryl Geweke or his spouse or any of his descendants or descendants spouses.

2.E. "Land" is defined at Recital D.

2.F. "Monument Sign" shall mean: An independent, freestanding structure supported on the ground having a solid base as opposed to being supported by poles or open braces.

2.G. "Project" is the construction and operation of a 75 foot electronic display sign with a maximum allowable sign area of 960 square feet.

2.H. "Pylon Sign" shall mean: An elevated freestanding sign supported by one or more poles, columns or open braces.

### Section 3. Obligations of Developer and City.

3.A. Obligation of Developer. In consideration of City entering into this Agreement, Developer agrees that it will comply with this Agreement and Project Approvals. The parties acknowledge that the execution of this Agreement by City is a material consideration for both Developer's acceptance of, and agreement to comply with, the terms and conditions of this Agreement and Approvals.

3.B. Obligation of City. In consideration of Developer entering into this Agreement, City agrees that it will comply with this Agreement, and with all of Project Approvals, and will, in accordance with the terms of this Agreement, process, and if consistent with this Agreement and applicable state law.

### Section 4. Development of Project and Parcel.

4.A. General Permitted Uses and Subsequent Approvals. The Project's: permitted uses; density and intensity of use; provisions for reservations or dedication of land for public purposes and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Project, shall be those set forth in this Agreement, the Project and the Project Approvals, and any amendments thereto, as further defined below.

4.B. Rules, Regulations, and Official Policies. The rules, regulations, standards, official policies and conditions governing the permitted uses of the Project, including those addressing the design, improvement, construction, and building standards, and specifications applicable to the Project and all infrastructure and appurtenances in connection therewith, shall be the Effective Standards.

4.C. Police Power and Taxing Power. The City, through the exercise of either its police power or its taxing power, whether by direct City action or initiative or referendum, shall not establish, enact or impose any additional conditions, dedications, fees,

and other exactions, policies, standards, laws or regulations which directly relate to the Project development. For purposes of this section, this section creates a vested right in favor of the Development concerning signage but not future non-signage development.

4.D. Compliance with California Environmental Quality Act. A negative declaration was certified by the City Council on November 17, 2004 ( Council Resolution # 2004-257). Except as required by the California Environmental Quality Act as it may be amended from time to time or by other state law, no subsequent environmental impact report, supplement to an environmental impact report, addendum to an environmental impact report, or other type of additional environmental review shall be required of any Subsequent Approval concerning the Project.

4.E. Restrictions on the Project. The Project shall be restricted in the following manner:

1. No new pylon sign shall be constructed on any of the real property identified in Exhibit C. The present Dodge monument sign shall be treated as an existing non-conforming use under the Lodi Zoning Ordinance. With the exception of the existing Dodge Monument Sign, no Monument Signs shall be constructed or maintained on the property identified in Exhibit C in excess of 12 feet in height. Moreover the existing Pylon Sign at Geweke Toyota shall be removed.

2. The Project shall not portray any motion, shall not change images more frequently than once each five seconds, shall not display any backgrounds with more than twenty-five percent of the screen area in white, shall be dimmed below 500 nits during nighttime operations; shall only advertise products and services directly related to the auto dealerships located on the land identified in Exhibit C except for community use described herein; and, shall provide that ten percent of the in-use time of the electronic display shall be made available to the following organizations for community events and messages: City of Lodi, Lodi Conference and Visitors Bureau, Lodi Chamber of Commerce, Lodi Downtown Business Partnership, Lodi-Woodbridge Wine Grape Commission or their successors in interest ("Charitable Organizations"). Furthermore, after the sign is operational, Developer agrees to participate in the Amber Alert program for privately owned electronic signs.

3. Any unused time allotted to the above entities shall be used to display time and temperature. The time allotted to the Charitable Organizations shall be randomly spread throughout the time period that the display is on each day.

4. The Developer shall not apply for any other electronic display on any of its other properties within the municipal boundaries of Lodi. This restriction shall extend to any entity that a Geweke family member enjoys a majority control and shall extend to any present or subsequently acquired real property.

5. The existing Geweke R.V. pylon sign located at 880 S. Beckman Road shall be refurbished to match the general design of the new electronic display sign

Section 5. Amendment of Agreement. This Agreement may be amended from time to time by mutual consent of the original parties, and, if Developer assigns all or part of its interest in this Agreement, the consent of such assignees to the extent that such amendment affects the assignees property, portion of the Project, or interest therein.

Section 6. Cooperation in the Event of Legal Challenge. In the event of any legal or equitable act, action, or other proceeding instituted by a third party, other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending said action or proceeding.

Section 7. Default; Remedies; Termination.

7.A. Default by Developer.

1. Except for recovery for any damages incurred during the cure period, failure or unreasonable delay by Developer to perform any term, provision, or condition of this Agreement, or creation by Developer of a condition or circumstance which will render such performance impossible, for a period of three (3) months after written notice thereof from the City shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such three (3) month period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

2. As an exception to the period of time to cure a default provided by the immediately preceding paragraph, the time to cure a default of subsection 4.E.2 shall be thirty (30) days.

3. During any period of curing, the Developer shall not be considered in default for the purposes of termination or institution of legal proceedings. If the default is cured, then no default shall exist and the noticing party shall take no further action.

4. Subject to the foregoing, after notice and expiration of the three (3) month period without cure or commencing to cure, the City, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City in the manner set forth in Government Code Sections 65865, 65867, and 65868. Termination may result in removal of the sign.

5. Following consideration of the evidence presented in said review before the City Council, and a determination by the City Council based thereon, the City, at its option, may give written notice of termination of this Agreement to the Developer by certified mail. Written notice of termination of this Agreement shall be effective



immediately upon mailing of such notice by defaulting party pursuant to the section entitled "Notices."

7.B. Annual Review The City shall review the extent of good faith compliance by Developer with the terms of this Agreement at least every twelve (12) months from the date this Agreement is entered into, at which time the Developer, or successors in interest thereto, shall be required to demonstrate good faith compliance with the terms of this Agreement. The City, after a public hearing, shall determine on the basis of substantial evidence whether or not the Developer has, for the period under review, complied in good faith with the terms and conditions of this Agreement. If the City finds that good faith compliance has not occurred, the termination of this Agreement shall commence as provided by the default provisions of Section 7.A.

7.C. Default by City. In the event City does not accept, review, approve, or issue development permits, entitlements, or other land use or building approvals for use in a timely fashion as provided in this Agreement or as otherwise agreed to by the parties, or the City otherwise defaults under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law or equity (except as limited herein). Developer shall provide City with written notice of the default and the City shall have twenty-one (21) days to notify Developer of City's initial action to cure the default and ninety (90) days from receipt of the Developer's notice to cure the default.

7.D. Enforced Delay; Extension of Time Performance. In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walk-outs, riots, floods, force majeure, earthquakes, fires, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project's Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Developer. Upon the request of either party hereto, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon by Developer and the City Manager.

7.E. Legal Action. City and Developer may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default; to enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof; or to obtain any remedies consistent with the purpose of this Agreement. City shall have the right to seek specific performance or any other legal remedy of the Developer with respect thereto nor to seek specific performance to compel performance of this Agreement. Any legal actions hereunder shall be initiated in the Superior Court of the County of San Joaquin, State of California

7.F. Applicable Law/Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this

Agreement, the prevailing party is entitled to reasonable attorneys' fees and court costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such actions, taking depositions and discovery, and all other necessary or appropriate costs incurred in the litigation.

Section 8. Hold Harmless Agreement. Developer agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct operations of the Developer or those of its contractors, subcontractors, agents, employees, or other persons acting on its behalf with respect to the Project. Developer agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer's direct activities in connection with the Project. This Section 8 includes any claims against the City concerning the validity of the Agreement or the City's compliance with the California Environmental Quality Act concerning the Agreement.

Section 9. No Agency, Joint Venture or Partnership. It is specifically understood and agreed to by and between the parties hereto that: (1) the Project is a private development; (2) the City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time, and only until such time, that the City accepts the same pursuant to its ordinances or in connection with the various Project Approvals; (3) Developer shall have full power over and exclusive control of the Project, subject only to the limitations and obligations of Developer under the Project's Approvals and this Agreement; and (4) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between the City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

Section 10. Miscellaneous Provisions.

10.A. Assignment. Developer may assign this Agreement in whole or in part in connection with the sale of all or any portion of the Land. Notice of the assignment shall be given to the City as provided herein prior to the effective date of the assignment. Such notice shall identify and describe the assignee.

10.B. Non-Conflicting Regulations. The City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable General Plan, Specific Plan, zoning ordinance, subdivision ordinance or any other land use ordinances or building ordinances, resolutions or other rules, regulations or policies adopted by the City which changes, alters or amends the rules, regulations and policies governing permitted uses of the Project or density or design of the Project applicable to the development of the Project at the Effective Date of this Agreement as provided by Government Code Section 65866, unless such change, alteration, or

amendment is permitted under this Agreement. In addition, in the event of any conflict between this Agreement and the Project Approvals, the terms of this Agreement will prevail.

10.C. Consistency with General Plan. City hereby finds and determines that execution of this Agreement furthers the public health, safety, and general welfare of the community and that the provisions of this Agreement are consistent with the General Plan.

10.D. Severability. If any term, provision, covenant or condition of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties.

10.E. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

10.F. Conflict Between Agreement and Exhibits. If a conflict exists between the terms of the Agreement and the Exhibits, the Agreement shall control over the inconsistent portion of any exhibit. The Project Approvals, and Effective Standards contained in Exhibits hereto may be amended pursuant to and consistent with this Agreement without amendment to this Agreement.

Section 11. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested, or by overnight or other courier service. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after refusal of delivery of a registered or certified letter containing such notice, properly addressed, with postage prepaid. If personally delivered, a notice shall be deemed to have been given when delivered to the party or refused by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted to the new address. Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

City of Lodi  
221 West Pine Street  
P.O. Box 3006  
Lodi, California 95241  
Attn: City Manager

If to Developer, to:

GFLIP III, LP  
P.O. Box 1210  
Lodi, California 95241

Section 12. Entire Agreement; Counterparts and Exhibits. This Agreement is executed in three (3) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of () pages and () exhibits which constitute, in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 13. Binding Effect and Recordation of Development Agreement. The burden of this Agreement shall bind, and its benefits shall inure to the successors-in-interest of the City and Developer. No later than ten (10) days after the City enters into this Agreement, the City Clerk shall at Developer's expense record an executed copy of this Agreement in the Official Records of the County of San Joaquin.

Section 14. CalTrans Permits and Approval. Developer acknowledges that it must obtain necessary approvals from the State Department of Transportation before constructing the Development.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the day and year first above written.

CITY:

CITY OF LODI

By: \_\_\_\_\_  
Title: \_\_\_\_\_

DEVELOPER:

GFLIP III, LP, a California Limited  
Partnership Corporation

By: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST: City Clerk

By: \_\_\_\_\_  
Title: \_\_\_\_\_

APPROVED AS TO FORM:

CITY ATTORNEY

By: \_\_\_\_\_  
Title: City Attorney

NOTARY ACKNOWLEDGMENTS

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

STATE OF CALIFORNIA                    )  
COUNTY OF \_\_\_\_\_                )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally  
appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s)  
is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the  
person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

PROOF OF PUBLICATION

(2015.5 C.C.C.P.)

STATE OF CALIFORNIA

County of San Joaquin

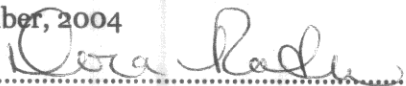
I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years and not a party to or interested in the above entitled matter. I am the principal clerk of the printer of the Lodi News-Sentinel, a newspaper of general circulation, printed and published daily except Sundays and holidays, in the City of Lodi, California, County of San Joaquin and which newspaper had been adjudicated a newspaper of general circulation by the Superior Court, Department 3, of the County of San Joaquin, State of California, under the date of May 26th, 1953. Case Number 65990; that the notice of which the annexed is a printed copy (set in type not smaller than non-pareil) has been published in each regular and entire issue of said newspaper and not in any supplement thereto on the following dates to-wit:

November 6th

all in the year 2004.

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated at Lodi, California, this 6th day of November, 2004



Signature

This space is for the County Clerk's Filing Stamp

RECEIVED

NOV 10 2004

City Clerk  
City of Lodi

Proof of Publication of

Notice of Public Hearing

City of Lodi

City of Lodi & GFLIP III, L.P., November 17th, 2004

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that on Wednesday, November 17, 2004, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

a) a development agreement between the City of Lodi and GFLIP III, L.P., relating to the development known as Electronic Display Sign to be located at 1251 South Beckman Road, Lodi.

Information regarding this item may be obtained in the office of the Community Development Department, 221 West Pine Street, Lodi, California. All interested persons are invited to present their views and comments on this matter. Written statements may be filed with the City Clerk at any time prior to the hearing scheduled herein, and oral statements may be made at said hearing.

If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order of the Lodi City Council:  
Susan J. Blackston  
City Clerk

Dated: November 4, 2004  
Approved as to form:  
D. Stephen Schwabauer  
City Attorney  
November 6, 2004

— 7265

7265





**CITY OF LODI**  
**Carnegie Forum**  
305 West Pine Street, Lodi

**NOTICE OF PUBLIC HEARING**

**Date:** November 17, 2004

**Time:** 7:00 p.m.

For information regarding this notice please contact:

**Susan J. Blackston**  
**City Clerk**  
**Telephone: (209) 333-6702**

**NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** that on **Wednesday, November 17, 2004**, at the hour of 7:00 p.m., or as soon thereafter as the matter may be heard, the City Council will conduct a Public Hearing at the Carnegie Forum, 305 West Pine Street, Lodi, to consider the following matter:

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If you challenge the subject matter in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City Clerk, 221 West Pine Street, at or prior to the Public Hearing.

By Order of the Lodi City Council:

A handwritten signature in cursive script, appearing to read "Susan J. Blackston".

Susan J. Blackston  
City Clerk

**Dated: November 4, 2004**

Approved as to form:

A handwritten signature in cursive script, appearing to read "D. Stephen Schwabauer".

D. Stephen Schwabauer  
City Attorney



***Please immediately confirm receipt  
of this fax by calling 333-6702***

CITY OF LODI  
P. O. BOX 3006  
LODI, CALIFORNIA 95241-1910

**ADVERTISING INSTRUCTIONS**

**SUBJECT:** SET PUBLIC HEARING FOR NOVEMBER 17, 2004, TO CONSIDER A  
DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LODI AND GFLIP III,  
L.P., RELATING TO THE DEVELOPMENT KNOWN AS ELECTRONIC DISPLAY  
SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD, LODI

**LEGAL AD**

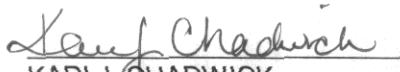
**PUBLISH DATE:** SATURDAY NOVEMBER 6, 2004

**TEAR SHEETS WANTED:** Three (3) please

**SEND AFFIDAVIT AND BILL TO:** SUSAN BLACKSTON, CITY CLERK  
City of Lodi  
P.O. Box 3006  
Lodi, CA 95241-1910

**DATED:** THURSDAY, NOVEMBER 4, 2004

**ORDERED BY:**

  
KARI J. CHADWICK  
ADMINISTRATIVE CLERK

JACQUELINE L. TAYLOR, CMC  
DEPUTY CITY CLERK

JENNIFER M. PERRIN, CMC  
DEPUTY CITY CLERK

**Verify Appearance of this Legal in the Newspaper – Copy to File**

**SEND PROOF OF ADVERTISEMENT. THANK YOU!!**

LNS	Faxed to the Sentinel at 369-1084 at _____(time) on _____(date) _____(pages)
	Phoned to confirm receipt of all pages at _____(time) _____Jac _____KJC _____Jen (initials)



## **DECLARATION OF POSTING**

**SET PUBLIC HEARING FOR NOVEMBER 17, 2004, TO CONSIDER A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LODI AND GFLIP III, L.P., RELATING TO THE DEVELOPMENT KNOWN AS ELECTRONIC DISPLAY SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD, LODI**

On Friday, November 5, 2004, in the City of Lodi, San Joaquin County, California, a copy of a Notice of Public Hearing to consider a development agreement between the City of Lodi and GFLIP III, L.P., relating to the development known as Electronic Display Sign to be located at 1251 South Beckman Road, Lodi (attached hereto, marked Exhibit "A"), was posted at the following four locations:

Lodi Public Library  
Lodi City Clerk's Office  
Lodi City Hall Lobby  
Lodi Carnegie Forum

I declare under penalty of perjury that the foregoing is true and correct.

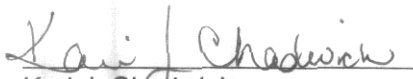
Executed on November 5, 2004, at Lodi, California.

ORDERED BY:

**SUSAN J. BLACKSTON**  
**CITY CLERK**

---

Jacqueline L. Taylor, CMC  
Deputy City Clerk

  
Kari J. Chadwick  
Administrative Clerk

---

Jennifer M. Perrin, CMC  
Deputy City Clerk



## **DECLARATION OF MAILING**

### **SET PUBLIC HEARING FOR NOVEMBER 17, 2004, TO CONSIDER A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LODI AND GFLIP III, L.P., RELATING TO THE DEVELOPMENT KNOWN AS ELECTRONIC DISPLAY SIGN TO BE LOCATED AT 1251 SOUTH BECKMAN ROAD, LODI**

On November 5, 2004, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a notice to set public hearing for November 17, 2004, to consider a development agreement between the City of Lodi and GFLIP III, L.P., relating to the development known as Electronic Display Sign to be located at 1251 South Beckman Road, Lodi, marked Exhibit "A"; said envelopes were addressed as is more particularly shown on Exhibit "B" attached hereto.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 4, 2004, at Lodi, California.

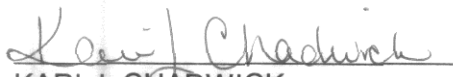
ORDERED BY:

**SUSAN BLACKSTON  
CITY CLERK, CITY OF LODI**

ORDERED BY:

\_\_\_\_\_  
JACQUELINE L. TAYLOR  
DEPUTY CITY CLERK

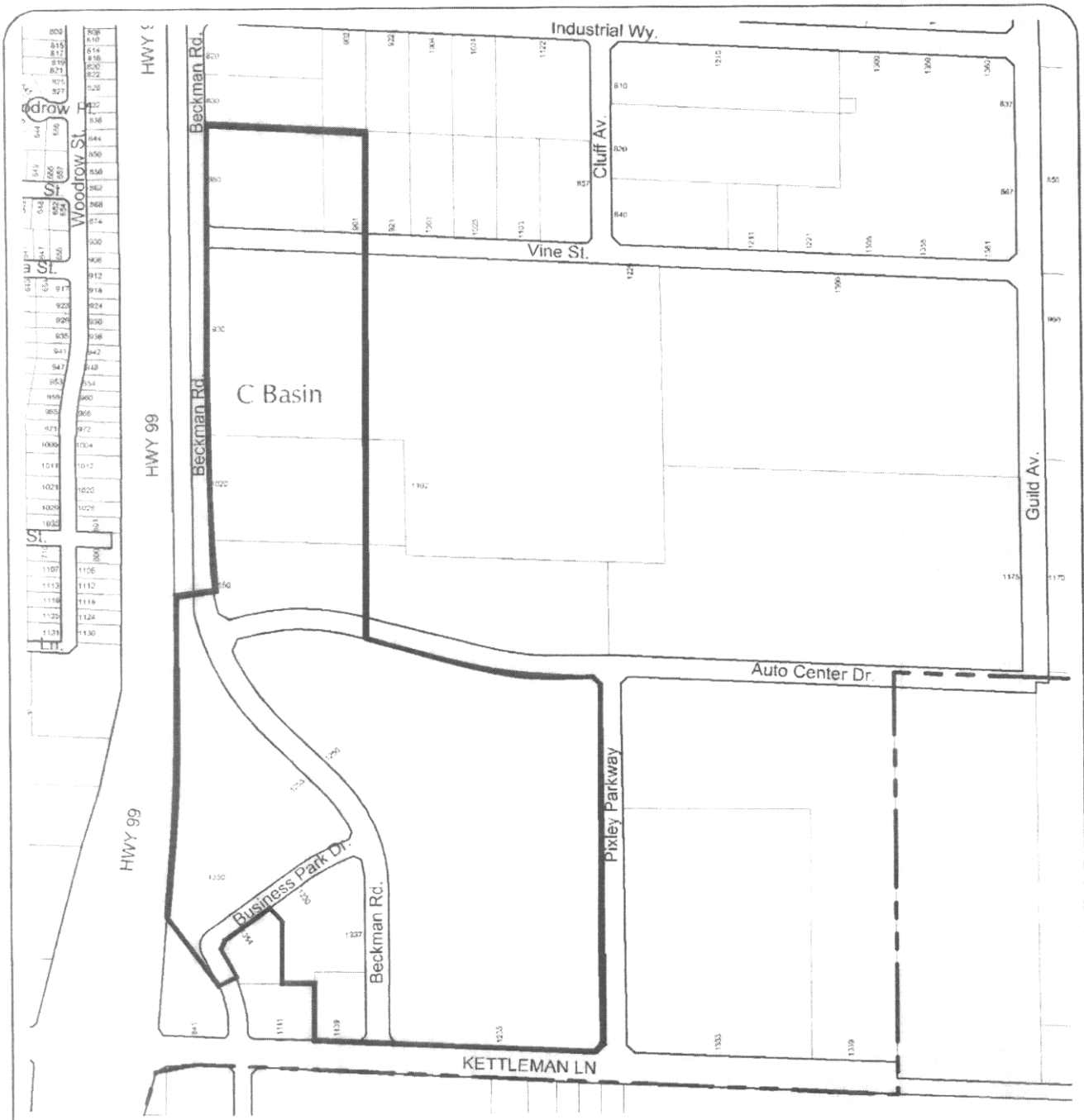
\_\_\_\_\_  
JENNIFER M. PERRIN  
DEPUTY CITY CLERK

  
KARI J. CHADWICK  
ADMINISTRATIVE CLERK

mailing list for: <sup>agreement</sup> agreement between the City of Lodi +  
GFLIP III, L.P., relating to the development know as  
Electronic Display Sign to be located @ 1251 S. Beckman Rd.,  
Lodi

APN; OWNER; ADDRESS; CITY; STATE; ZIP; SITUSNUM; SITUSDIR; SITUSSTNAME; SITUSTYP  
E

1. 04925057; MCDONALDS CORPORATION ; 4502 GEORGETOWN PL #202  
; STOCKTON ; CA; 95207; 841; E ; KETTLEMAN ; LN
2. 04728022; GFLIP III LIMITED PARTNERS ET; PO BOX  
1210; LODI; CA; 95241; 1045; S; CHEROKEE;
3. 04741045; SCHMIERER, JIMMY & BILLIE JO; 2300 W LODI  
AVE; LODI; CA; 95242; 1130; S; WOODROW; ST
4. 04925059; FREDAN PROPERTIES LLC; 1300 W LODI AVE SUITE  
K; LODI; CA; 95242; 0; ; ;
5. 04925060; SINGH, BALKAR & RAVINDER K; 1111 E KETTLEMAN  
LN; LODI; CA; 95240; 0; ; ;
6. 04925072; G FLIP III LP; 920 S CHEROKEE LN; LODI; CA; 95240; 0; ; ;



**EXHIBIT "B"**

Key Advertising, Inc.  
Electronic Message Sign

## **EXHIBIT "C"**

**880 S. Beckman Road ( Geweke RV)**

**APN# 049-250-26**

**901 E. Vine Street (Geweke RV)**

**APN# 049-150-01**

**1020 E Beckman Road (Geweke Toyota)**

**APN# 049-070-77**

**1150 S. Beckman Road (Geweke Toyota Expansion)**

**APN# 049-070-78**

**1250 S. Beckman Road**

**APN# 049-250-72**

**1139 E. Kettleman Lane (Geweke Plaza)**

**APN# 049-250-74**

**1337 S. Beckman Road**

**APN# 049-250-73**

**1255 S. Beckman Road (Geweke Dodge, Geweke KIA)**

**APN# 049-250-75**